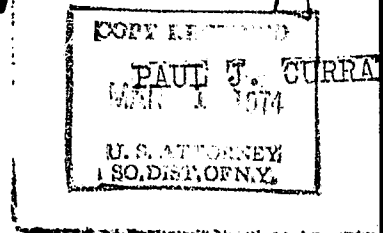


***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1027



In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

MILTON PARNES and BARBARA PARNES,

Appellants.

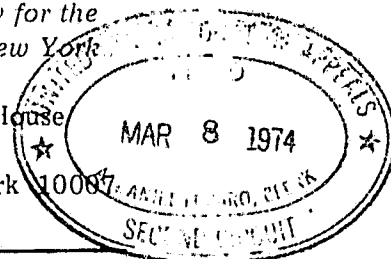
*On Appeal from Judgment of the United States District
Court for the Southern District of New York*

APPENDIX

Volume III, pp 501a - end

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1 jj:mg 2

Goberman-cross

2 THE WITNESS: That's right.

3 THE COURT: I think you better leave it at that.

4 MR. COHN: All right, your Honor. Let's see if
5 I can ask this question.

6 Q Any markers which were not collected would repre-
7 sent deductions from your \$400,000 figure, would that be
8 fair?

9 THE COURT: I think that is a difficult question.
10 I don't know at what point of time we are talking about.

11 Q I am talking about the point of time at which you
12 say you arrived at the fact that \$400,000 gross or ap-
13 proximately \$350,000 after a reserve for bad debts -- at
14 the time you made those calculations and included approxi-
15 mately \$74,000 for Selick, would it be fair to say that if
16 that \$74,000 or any other amounts included by you in your
17 total were not in fact collected then there would be, ac-
18 cordingly, deductions from the figure you gave us?

19 MR. McGUIRE: Objection to the form of the ques-
20 tion.

21 THE COURT: I don't understand that.

22 MR. McGUIRE: All of these markers, according to
23 the testimony, were not collected.

24 MR. COHN: Your Honor, that is exactly what I
25 would like to find out.

1 H:mg 3

Goberman-cross

2 THE WITNESS: I think I know what he is trying
3 to day. If he could say it, I could answer it.

4 Q I would welcome your assistance, Mr. Goberman,
5 if you know what I am trying to say.

6 A May I ask the question?

7 You are trying to say if there was \$400,000
8 collected and \$75,000 -- or collectible -- and \$75,000
9 is not collected, would you say, Mr. Goberman, deduct
10 \$75,000 from \$400,000, that it would only be \$325,000.

11 Is that what you are trying to say?

12 Q Yes.

13 A That is simple arithmetic. That could go down
14 to \$100,000 if the other people didn't pay.

15 In the meanwhile --

16 Q Just a second. The fact is you don't know who
17 paid and who didn't pay.

18 A I had a very good idea who paid and didn't pay.

19 Q Is your recollection any clearer as to how much
20 Mr. Norber owed?

21 A No.

22 Q If I suggest a figure of --

23 A I could look in here for Mr. Norber and give it
24 to you.

25 Q I would appreciate that very much.

1 jh:mg 4

Goberman-cross

2 A Surely. I was looking for Selick at your request.

3 Q If you could now look for Norber,,I would appreciate it.
4

5 A You see, Zelick and Norber were partners and they
6 were both operators of that casino under Mr. Parness.

7 Q Mr. Goberman, with reference to your last answer,
8 was Selick something more than a gambler? Are you telling
9 us he, for example, ran junkets himself?

10 A I am telling you, Mr. Cohn, that Mr. Selick was the
11 kingpin, in my opinion--

12 Q Please. I think his Honor will say --

13 THE COURT: Don't give us an opinion.

14 THE WITNESS: This isn't opinion, your Honor.

15 Those are facts.

16 THE COURT: All right.

17 A Well, let me give you the Norber figures.

18 Q All right. Fine.

19 A Norber owed \$9500 and by the way, on that same
20 junket, with all this, 54 and 95, one of their buddies won
21 \$18,000.

22 Norber, 9500 to be picked up, and I think there
23 is one more instance in here when Norber -- even though I
24 don't have the records here, to the best of my recollection,
25 Norber owed little more than 9500.

1 jh:mg 5

Goberman-cross

2 I think he owed about \$12,000. There is a \$3,000
3 figure that is not in here.

4 Q Would it be fair to say that your computation of
5 the \$350,000 was as of just prior to the time of the hotel
6 foreclosure at the beginning of February 1971?

7 A Yes, sir.

8 Q Mr. Goberman, you know for a fact that Norber
9 didn't pay, don't you?

10 A Did not pay?

11 Q Did not pay.

12 A I knew that Norber did not pay all the money that
13 was due at one time.

14 Q You know that Norber was arrested on the way into
15 the country with cash that he was supposedly bringing to
16 you to pay this unpaid marker? Don't you know that?

17 MR. McGUIRE: Your Honor--

18 THE COURT: I don't understand the question.

19 MR. COHN: Maybe I could rephrase it.

20 THE COURT: Did you know this gentleman was arrest-
21 ed?

22 THE WITNESS: Yes. He is trying -- yes.

23 THE COURT: Where was he arrested?

24 THE WITNESS: In New York.

25 MR. McGUIRE: Your Honor, I object to the form

1 jh:mg 6

Goberman-cross

2 of that question because it assumes facts not in evidence,
3 to wit, that Mr. Norber did not have any other money to
4 pay.

5 THE COURT: You say you know he was arrested in
6 New York?

7 THE WITNESS: Yes, sir.

8 THE COURT: What is your question?

9 Q Mr. Goberman, did you not submit an affidavit to
10 a court here in New York accompanied by a receipt given
11 to Mr. Norber from the Customs authorities --

12 A From the who?

13 Q -- Customs authorities on the subject of Mr.
14 Norber's inability to pay this debt because his money had
15 been seized?

16 Do you recall --

17 A Yes. Yes, indeed. It was \$60,000 that was taken
18 away from him.

19 Q Was that affidavit of yours with the attachment
20 concerning Mr. Norber sworn to on February 2, 1971?

21 A Yes. That was the affidavit you showed me yester-
22 day. I admit that Mr. Norber had \$60,000 that I knew of.

23 How much more he had, I don't know.

24 Q Did you tell the Court on that occasion that
25 Mr. Norber was bringing the money to you?

1 jh:mg 7

Goberman-cross

2 A Yes.

3 MR. MCGUIRE: I object to the further continua-
4 tion of this, your Honor, unless -

5 THE COURT: All right.

6 MR. MCGUIRE: -- unless he is able to show some-
7 thing inconsistent.

8 THE COURT: I agree. You can stop right there.
9 You did make such a statement?

10 THE WITNESS: Oh, yes.

11 Q By the way, on your records, was Mr. Selick,
12 for example, treated as a junketeer?

13 A I don't know what arrangements Mr. Parness had.
14 These two were his special buddies, customers.

15 THE COURT: I think the question is --

16 THE WITNESS: I can't answer that, sir. I don't
17 know.

18 THE COURT: Did you consider them a junketeer?

19 THE WITNESS: Yes and no. They were there.

20 Q By the wa-, to your knowledge, was a collection
21 agency used by St. Maarten Isle Hotel Corporation and
22 Olympic up here in the United States to try to collect un-
23 paid markers?

24 A I know that when I was responsible for it I would
25 turn over bad checks to a collection agency and I believe

1 jh:mg 8

Goberman-cross

2 that Mr. Parness did the same thing.

3 Q What was the name of that collection agency?

4 A I think it was Mr. Barry Cross. Now, I am not
5 sure.

6 Q And the agency was operated under his name?

7 A I don't know what it was.

8 Q Would it refresh your recollection if I suggested--

9 A I happened to know Mr. Cross' name. He was also
10 a junketeer at the same time. But there were efforts
11 made to collect moneys through agencies.

12 Q Were various lawsuits commenced, to your knowledge,
13 in an attempt to collect unpaid markers?

14 A You say various losses?

15 Q Lawsuits.

16 A Lawsuits? I don't remember. I don't think I had
17 any when I was responsible for the collections.

18 What happened after I can't tell you.

19 Q Talking about the period of time from the fall of
20 1970 onward, when Mr. Parness succeeded Mr. Ferrara, to
21 your knowledge, were lawsuits brought in the United States
22 in court in an attempt to collect various unpaid markers?

23 A I don't recall.

24 Q Do you know whether in certain states suits --

25 THE COURT: Let's not get into that.

1 jh:mg 9 Goberman-cross

2 Q You don't know whether--

3 THE COURT: He doesn't know whether there were
4 any suits.

5 Q Did Cross America Credit Corporation render
6 periodic reports concerning the status of collections, law-
7 suits in progress and things of that kind to St. Maarten
8 Isle Hotel Corporation before Mr. Parness succeeded Mr.
9 Ferrara?

10 A I don't believe so. I don't remember. I know I
11 didn't hire him.

12 Q Who hired him?

13 A When I was responsible for collections I did not
14 hire Mr. Cross. Mr. Parness just have hired him. The first
15 time I met him was on a junket.

16 I have a junket sheet of his here.

17 Q Did you know that Mr. Cross was handling this
18 collection work?

19 A I knew he was handling some collection work, yes.

20 Q Did you ever see any of Cross America Credit
21 Corporation's reports on action being taken with refer-
22 ence to collection of any of these gambling debts?

23 A No. I did-- I remember at one point when I hap-
24 pened to be in the New York Office Mr. Cross came in and
25 handed Mr. Parness some checks and as a matter of fact I

1 jh:mg 10

Goberman-cross

2 was asked to -- it is possible that one of the checks were
3 made in my name, because I was asked to accompany Mr. Cross
4 to the bank and I had to file a signature or do something.
5 I think \$3500 was the amount.

6 Q Was that as a result of a judgment which had been
7 obtained?

8 A I can't answer that. I wouldn't know that.

9 Q One of these folers here, and I am referring to
10 Exhibit 175 for identification, refers to a man named A.
11 Wolfer.

12 Was Mr. Wolfer introduced to the casino by Mr.
13 Parness?

14 A No. Mr. Wolfer happened to be one that I passed
15 credit on because I became acquainted with Mr. Wolfer and
16 his wife previously when he came down as an individual and
17 he lost I think \$30,000 while Mr. Ferrara was there and
18 he came down again.

19 Mr. Parness, knowing his business, said, "This
20 man wants credit. Now, I don't know him."

21 I said, "Well, I do, and I think he is good for
22 it, because he did lose \$30,000."

23 So Mr. Wolfer was my credit okay.

24 Q How did Mr. Wolfer make out on the second occasion?

25 A Mr. Wolfer didn't do so hot.

1 jh:mg 11

Goberman-cross

2 Q Did he lose about another \$20,000?

3 A He lost and he never paid it.

4 Q Did you include that \$20,000 in your \$400,000 com-
5 putation?

6 A I don't remember. I doubt it very much.

7 If I did, it certainly-- it would have been a
8 stupid thing to do, because I knew that we could not locate--
9 I tried to locate Mr. Wolfer and he had flown the country
10 or --

11 Q He had what?

12 THE COURT: He couldn't find him.

13 A Flew the country or flown the country, whichever
14 is proper. He was out of sight.

15 THE COURT: Your best recollection is in this
16 \$400,000 figure you didn't include Mr. Wolfer?

17 THE WITNESS: I don't believe I did.

18 Q You just don't know though, do you?

19 A I beg your pardon.

20 Q Sitting on this witness stand right now you don't
21 know whether you did or not, do you?

22 A I don't think I did.

23 Q You don't know to a certainty?

24 A I would say that in all probability I probably
25 didn't include it.

1 jh:mg 12

Goberman-cross

2 Q Sitting on this witness stand now--

3 A Sitting on this witness stand, I don't believe
4 I included it.

5 MR. McGUIRE: I object, your Honor.

6 THE COURT: He doesn't think he included it, but
7 he doesn't recall.

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5-B
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eb:mg 1

Goberman-cross

2 Q If I may ask this question on this whole general
3 subject, as you are on this witness stand now, you cannot
4 give us an itemization of what uncollected markers you in-
5 cluded and what you did not include in the \$400,000 figure,
6 is that so?

7 A I just took the flat, in my mind, 10 per cent, and
8 I don't believe that I included Mr. --

9 THE COURT: That isn't quite clear, or the answer
10 to the question.

11 I think the question is whether you, on the basis
12 of these records, sitting here in that witness chair, you
13 can reconstruct that \$400,000.

14 THE WITNESS: I can't reconstruct it without some
15 assistance. There are some more papers some place.

16 THE COURT: You couldn't do it as you sit here now
17 without those records?

18 THE WITNESS: No.

19 Q Now, after Mr. Parness succeeded Mr. Ferrara in
20 October, 1970, what were your financial arrangements with
21 Mr. Parness? In other words, how was he supposed to be
22 compensated?

23 A Mr. Parness was going to -- first of all, his
24 travel agency was going to get all the commissions on the
25 flight, which was quite substantial.

1 eb:mg 12

Goberman-cross

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2 THE COURT: When you say commissions on the
3 flight, what do you mean by that? Commissions from the
4 charter?

5 THE WITNESS: Yes, sir.

6 THE COURT: From the airplane company?

7 THE WITNESS: Yes, sir. I believe that the average
8 bill, invoice, for a charter plane was around \$14,000.
9 Some are more and some are less. Which was \$20,000 -
10 and some are as low as 12. I take an average of about
11 \$15,000. And then the airlines reimburse the travel
12 agency like they would on any other ticket. But I would
13 consider it a substantial sum.

14 Q Well, travel agencies, other than Travel Time, sup-
15 plied varying junkets to St. Maarten Isle Hotel after
16 October 1970, didn't they?

17 A But they didn't lease the plane.

18 Q My question is --

19 A I am answering it. Everything went through
20 Bobby and this company.

21 Q If a junket say, came through Detroit, or some
22 place like that, were there instances wherein travel
23 agencies other than Travel Time were utilized?

24 A Everything had to go through Travel Time or they
25 couldn't -- they didn't have a deal. I agreed to that.

eb:mg 3

Goberman-cross

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I thought that was a good idea.

Q And is it your testimony that that's how Mr. Parness was to be compensated for running the casino?

A That was one of the ways that he was to be compensated.

Q Did you have an agreement with Mr. Parness that he was supposed to be your partner in the casino?

A No, sir.

Q Did you ever tell anybody that Mr. Parness was your partner in the casino?

A No, sir. I did say that we discussed a partnership and I would have been delighted to have Mr. Parness to be a partner under those terms.

Q When was that discussion?

A At the early part of our -- after he was in there for a while.

Q Now, when you told the jury about the compensation received by a junketeer, namely, this 10 per cent of collections, and in some instances an additional \$50 a head for the junket, that compensation, after October 1970, went to the particular junketeer who sent down the junket rather than to Mr. Parness?

A No. Everything had to go through Mr. Parness -- but it had to go through Mr. Parness and whether he -- and

1 eb:mg 4

Goberman-cross

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2 I have a feeling that he was reimbursed.

3 Q I really don't want your feeling.

4 Were there junketeers other than Mr. Parness who
5 were supplying junkets to St. Maarten Isle Hotel between
6 October of 1970 and February of 1971?7 A Through Olympic, yes. Not directly like they
8 used to before Mr. Parness came there.

9 Q Can you name some of these other junketeers?

10 A Yes. There is a Mr. Landsman in New York.

11 I guess if I had the sheets I could remember them.

12 THE COURT: What sheets?

13 THE WITNESS: There was a man by the name of Carlo
14 from Springfield.

15 There was a Mr. Kurtz --

16 Q When these people supplied junkets, they were the
17 ones who received the 10 per cent of collection and/or the
18 \$50 a head?

19 A I couldn't answer that.

20 MR. MCGUIRE: I object to the form of the ques-
21 tion.

22 THE COURT: You don't know?

23 THE WITNESS: No, sir.

24 THE COURT: All right, you don't know. Just say
25 you don't know.

eb:mg 5

Goberman-cross

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1 eb:mg 5
2 Q Did you ever have any conversation with Mr.
3 Landsman or Mr. Carlo-- what was the third name you men-
4 tioned?

5 A Yes, I spoke to Mr. Landsman. I was frightened to
6 death to talk to Mr. Carlo.

7 MR. COHN: Your Honor.

8 THE COURT: Yes. Don't tell us that.

9 I think the third name was Mr. Kurtz.

10 THE WITNESS: Yes. Mr. Kurtz. Yes, I spoke to
11 Mr. Landsman.

12 Q In the course of your conversations with Mr.
13 Landsman did you learn whether Mr. Landsman was receiving
14 10 per cent of the collections from junkets he supplied
15 and \$50 a head?

16 A I didn't discuss that phase. We discussed some-
17 thing else of greater importance.

18 THE COURT: All right. Just don't tell us about
19 the other thing.

20 Q Now, had Mr. Ferrara been compensated by you?

21 A Yes, sir.

22 Q In what form?

23 A Two ways. I had him on the payroll as a consultant.

24 Q For how much money?

25 A \$2,000 a month.

1 eb:mg 6

Goberman-cross

487

2 Q \$24,000 a year?

3 A Yes, sir.

4 Q And what was the second one?

5 A The second one was, I, indirectly, found out I was
6 compensating him in rather a large amount of money.

7 Q I am talking about the \$24,000 a year.

8 A Yes, sir.

9 Q When Mr. Parness succeeded Mr. Ferrara, did you
10 place Mr. Parness on the payroll at \$24,000 a year?

11 A No, sir.

12 Q Did you agree to give Mr. Parness any compensation
13 other than commissions you say were coming into an agency
14 named, a travel agency named Travel Time?15 A Mr. Parness said he would like to become my partner,
16 and based on that fact, that he was satisfied to go along
17 with the arrangement that we had until which time he was
18 going to come up with a million dollars, at which time I
19 was going to give him a 50 per cent ownership in the casino
20 because I then began to fully realize that --21 MR. COHN: Well, your Honor, I don't know if we
22 want his realizations.23 Q So in any event you discussed a partnership with
24 Mr. Parness on the 50-50 basis of the casino and while that
25 was in the process of being further discussed or worked out,

1 eb:mg 7

Goberman-cross

488

2 you both went along as you were?

3 A Yes.

4 Q Without any specific compensation for Mr. Parness?

5 A That's right.

6 MR. COHN: Your Honor, I have just a very few more
7 questions. I think I can finish before the morning recess
8 if you will indulge me.9 Q Mr. Goberman, referring again to the June 9, 1972
10 deposition down in Philadelphia at the offices of Morgan
11 Lewis and Bockius, do you recall giving an account of a
12 trip to the bank in New Jersey on or about February 4, 1971?13 A I don't recall. If it is in there -- I don't
14 recall.

15 Q All right.

16 A Which bank in New Jersey are you referring to?

17 Q Newark and Essex Bank in East Orange.

18 A I don't recall it.

19 Q Were you asked the following questions, or should
20 I show it to him, your Honor?21 THE COURT: I suggest you show it to him so as
22 to orient him.23 Q Would you please read page 46, and having read
24 page 46, see whether it refreshes your recollection as to
25 whether you testified about a trip to the bank in East

1 eb:mg 8

Goberman-cross

489

2 Orange.

3 (Pause.)

4 Q I believe you will find the man's name Hampton
5 referred to in there, and it should be Hamilton.

6 THE COURT: Well, let him read it.

7 THE WITNESS: What is it you want to know about
8 this?

9 THE COURT: Have you read it?

10 THE WITNESS: Yes, sir.

11 Q Does what you have read on page 46 of this
12 deposition represent testimony which you gave?

13 A Yes, sir.

14 Q And was that an accurate account of your trip to
15 the bank on that day?

16 MR. MCGUIRE: Objection to the form, your Honor.

17 THE COURT: That's right. I think the real point
18 is does that refresh your recollection that you testified
19 about going to this bank and do you think that that sets forth
20 accurately what happened?

21 THE WITNESS: That is correct, your Honor.

22 MR. COHN: If I might just read this to the wit-
23 ness. I am going to begin with the question at page 46,
24 your Honor.

25 "Q Referring to P-107?

eb:mg 9a

Goberman cross

489a

1
2 "A Right. I I do know that and I am quite sure the
3 morning of February 5th, Mr. Hampton" --

4 Q Would you agree that that should be Hamilton?

5 A I don't know what it means. I don't agree at
6 all. I don't know what it means. You have it there.
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Goberman-cross

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t3b am

Q Who did you drive out to the bank with on the morning of February 5th, wasn't it a Mr. Hamilton and a Mr. Faigin?

A Yes.

Q Was somebody named Hampton there?

A Might have been.

Q You were there.

A Might have been the bank employee. Does it say Mr. Hampton was in the car w-th me and drove out there with me? If so I imagine you are referring to Hamilton. I would concede that.

"Q Referring to 107?

"A Right. I do know that, and I am quite sure the morning of February 5th Hamilton and myself and later Faigin who represented Holzer was driven over to Newark.

"Q The Newark & Essex Bank in East Orange?

"A Either East or West Orange. I'm not sure which. While I was in the lobby, two attorneys went down to see a certain chap who I don't know, which they knew and at which time there was a check of \$150,000. Whether there was any interest paid at that time I don't know but there was a cashier's check there to pay Holzer off."

Was that an accurate account of the events that

ebbr 2 Goberman-cross

morning?

A Almost. There were two checks involved.

Q With that exception it is an accurate account
of the events of that morning?

A Yes.

MR. MC GUIRE: I object to that, your Honor.

THE COURT: It isn't a question of whether it is
accurate but that is your recollection of what happened.

THE WITNESS: Yes.

MR. MC GUIRE: I think Mr. Cohn is trying to say
accurate and complete.

THE COURT: Well, this is just your recollection
as you gave it before and that is your recollection now?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Now, did there ever come an occasion when checks
totalling \$150,000 were delivered to you or were presented
in your presence at the offices at 1650 Broadway in New York
on February 4th or February 5th, 1971?

A You will have to repeat that.

Q Did you ever see two checks made payable, cashier's
checks made payable, bank checks made payable to Allan
Goberman totalling \$150,000 on February 4th or February 5th,
1971 at the hotel offices at 1650 Broadway, New York?

1 ebbr 3 Goberman-cross

2 A I believe the checks were inadvertently made out
3 to my name.

4 THE COURT: The question is they might have been
5 delivered?

6 A They might have been and then subsequently de-
7 stroyed.

8 THE COURT: Okay.

9 Q The checks that originally came where made out to
10 Allan Goberman, is that correct?

11 A I believe so.

12 Q And the lawyers wanted the checks made out to the law
13 firm of Wilkie, Farr & Gallagher, is that right?

14 A I understand that is so.

15 Q So the checks made out to Allan Goberman were de-
16 stroyed and new checks were issued?

17 A Yes, sir.

18 Q Is that correct?

19 A I believe that's what happened.

20 Q And it was to obtain these new checks that you
21 drove down to East Orange with Mr. Faigin and Mr. Hamilton
22 on the morning of February 5, 1971, was it not?

23 A It is not totally clear in my mind that there
24 were two checks made in my name. Someone told me that there
25 was.

1 ebbr 4

Goberman-cross.

2 THE COURT: Wait a minute. You haven't got the
3 question. I think all Mr. Cohn is asking you is on this
4 trip which you went on with Mr. Hamilton and Mr. Faigin to
5 East or West Orange, do you recall whether at that time you
6 got the checks that were made out to the law firm of Wilkie --

7 THE WITNESS: I don't know who they
8 were made out to, your Honor. They were handed to Mr. Hamil-
9 ton and Mr. Faigin.

10 THE COURT: You didn't see them?

11 THE WITNESS: And I was on the other side of the
12 railing.

13 THE COURT: You didn't see them?

14 THE WITNESS: I didn't see the typing on them, no.

15 Q Whopaid for the limousine that transported the
16 three of you from New York to New Jersey on February 5th,
17 1971?

18 A I didn't see any money change hands. I can't tell
19 you, although Mr. Faigin said --

20 Q Mr. Faigin what?

21 A Mr. Faigin said "I am going to call for our
22 limousine, the company's limousine." I was under the
23 impression it was the company's limousine.

24 Q Did you pay the sum of \$16 for that limousine ride
25 on that day?

1 ebbr

Goberman-cross

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2 A Beg your pardon?

3 Q Did you pay the sum of \$16 for that limousine ride
4 on that day?

5 A I don't believe so.

6 Q Are you sure?

7 A I don't believe I did.

8 Q By the way, Mr. Goverman --

9 MR. COHN: Excuse me a moment, please.

10 (Pause.)

11 Q Was it your testimony that in July of 1971 your
12 relationship with St. Maarten Isle Hotel was completely
13 terminated?14 A I think at that date I was officially voted out
15 by Mr. Levrey.16 Q And you no longer received any direct or indirect
17 compensation, is that fair?18 A I don't remember receiving any other checks, any
19 more checks.20 Q In any event, it was your understanding in July 1971
21 you were terminated in all capacities from St. Maarten Isle
22 Hotel, was it not?

23 A I don't believe I was on the payroll any longer.

24 Q Is it a fact that after your termination
25 in July of 1971 you continued using credit cards of the

1 ebbr

Goberman-cross

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2 St. Maarten Islen Hotel for a considerable period of time?

3 A I can't say untrue but that's a deliberate lie
4 because St. Maarten Isle Hotel never had credit cards.

5 Q Did Mr. Parness have a credit card?

6 A Mr. Parness never had a credit card as far as I know
7 because he wanted to use my credit card. I used my own
8 credit cards for the hotel. You have just twisted it around
9 the opposite way.

10 Q I will ask you once more, Mr. Goberman.

11 A Yes, sir.

12 Q Is it a fact that for many months after July of
13 1971 you used a credit card belonging to Mr. Parness, not to
14 you, for the purpose of making phone calls?

15 A Are you referring to phone calls?

16 Q Yes, sir.

17 A Then why didn't you say what you mean. I don't
18 consider that a credit card. Yes, I used it. I made a number
19 of calls to Canada and I told him and asked him whether
20 I could use it and he said yes, and then when that particular
21 time was over, he changed the card or changed the name
22 and I wasn't supposed to use it any longer.23 Q For how many months after you left the employ of
24 St. Maarten Islen Hotel did you continue to use Mr. Parness'
25 credit card?

1 ebbr

Goberman-cross

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2 A I don't recall.

3 Q Now, you said "for calls to Canada". The fact
4 is you used it for calls to Pennsylvania and a lot of
5 other places.

6 A Very possible.

7 Q You don't have any doubt about it?

8 A No.

9 Q Some of the calls you made were to Mr. Norber still
10 trying to collect the marker?

11 MR. MC GUIRE: I object. What relevance can it
12 possibly have.

13 THE COURT: I will let him answer if he remembers.

14 A Not to collect markers; in order to --

15 THE WITNESS: We are opening up a very touchy
16 field here, your Honor.

17 THE COURT: Well, I don't want to get into that.

18 THE WITNESS: We don't want to get involved in that
19 at this time.

20 Q You called Mr. Norber on this card.

21 A Yes, sir.

22 Q And how many months after you left the employ
23 of the St. Maarten Isle Hotel did you stop using
24 Mr. Parness' telephone credit card?

25 MR. MC GUIRE: Objection, your Honor.

1 ebbr

Goberman-cross

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2 THE COURT: We have been all over that. Let
3 us go on to something else.

4 Q From time to time in the course of your testimony
5 the name of Bobbie Parness, formerly Bobbie Landew has come
6 up, do you recall that?

7 A Yes, sir.

8 Q Had you, during, say, the early months of 1971,
9 expressed the fact that you had a very warm regard for
10 Bobbie Landew and valued her friendship very much?

11 A I looked upon her as a daughter of mine.

12 Q As a matter of fact, some time just within a few
13 days before this foreclosure business you presented Bobbie
14 with a gold bracelet as a token of your appreciation, did you
15 not?

16 A No, I didn't. She bought the gold bracelet
17 and charged it. I don't believe I ever bought Bobbie any
18 gifts.

19 Q Didn't you come in with a gold bracelet wrapped
20 in a box?

21 A If I came in with a gold bracelet wrapped
22 in a box it was one that she ordered. It is -- go ahead.
23 I don't remember giving Bobbie a gold bracelet.

24 Q Did you give her a birthday gift in the form
25 of a gold bracelet?

1 ebbr

Goberman-cross

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2 A I don't remember giving Bobbie -- I may have. I may
3 have but I don't remember.

4 MR. COHN: I don't know how you mark this,
5 your Honor.

6 (Defendant's Exhibit N was marked for identifi-
7 cation.)

8 Q Would you like to look at what we have here as
9 Exhibit N for identification and tell us whether you recognize
10 that as a birthday gift you gave to Bobbie the end of
11 January, 1971?

12 A I believe I gave this to Bobbie. I might have
13 contributed towards it with Mr. -- let me say that around the
14 hotel --

15 MR. COHN: Your Honor, I have no further questions
16 of this witness.

17 A All right. I don't remember giving her this gift.

18 THE COURT: All right. Let us take a short recess
19 now, ladies and gentlemen. You will be excused for a few
20 minutes.

21 (Jury left the courtroom.)

22 THE COURT: All right, gentlemen.

23 (Recess.)
24
25

1 jhbr 1

Goberman-redirect

2 (Jury present.)

3 THE COURT: You may proceed, Mr. Mc Guire.

4 MR. MC GUIRE: Thank you, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. MC GUIRE:

7 Q Mr. Goberman, on cross examination Mr. Cohn asked you
8 some questions about various occasions on which you gave
9 testimony in Philadelphia and he called those occasions
10 depositions. You remember those questions?

11 A Yes, sir.

12 Q By the way, so the jury will know, what is a
13 deposition?

14 A Deposition is when one is called upon to -- well,
15 as I understand it, Mr. Mc Guire, it is like giving testimony
16 in a court without being in court, the understanding I have of
17 a deposition.

18 THE COURT: In other words, you would go into a
19 lawyer's office, there would be some lawyers there, and they
20 would ask you questions?

21 THE WITNESS: Yes, sir.

22 THE COURT: And you would take an oath before you
23 made your answers?

24 THE WITNESS: Yes, sir.

25 THE COURT: That is what happened, anyway, in

1 jhbr 2
2 Goberman-redirect
3 Philadelphia?

4 THE WITNESS: Yes, sir.

5 Q Is it correct, Mr. Goberman, to say that you gave
6 deposition testimony in Philadelphia on two occasions?

7 A I believe it was two occasions, yes, sir.

8 Q Once in the spring of 1971, is that correct, sir?

9 A I believe that is correct, yes, sir.

10 Q And once in the spring of 1972?

11 A Yes, sir.

12 Q Is that also correct?

13 A Yes, sir.

14 Q Were you represented by a lawyer when you appeared
15 to have your testimony taken by deposition?

16 A I believe Mr. Rubin was with me.

17 Q There is some hesitation in your answer. Can you
18 answer directly --

19 THE COURT: Never mind about that. Do you remem-
20 ber whether Mr. Rubin was there? Are you sure or are you
21 not sure?

22 A I believe he was there, but -- yes, sir.

23 Q he was there?

24 A I believe he was there.

25 Q Did you retain Mr. Rubin to represent you?

A No, sir. I had no money to pay him.

1 jhbr 3 Goberman-redirect

2 Q Do you know whether he was paid?

3 A I believe he received -- yes. I had no money
4 directly to pay Mr. Rubin.

5 Q Do you know whether he was in fact paid?

6 A Yes, sir.

7 MR. MC GUIRE: May these documents be marked
8 collectively as the next government exhibit for identifi-
9 cation.

10 (Government's Exhibit 194 was marked for
11 identification.)

12 Q Do you know who it was that paid Mr. Rubin?

13 A I believe he receive some funds from either
14 Mr. Parness or Mr. Faigin, to the best of my recollection.

15 Q Who was Mr. Faigin?

16 A Mr. Faigin at that time was Mr. Parness' attorney.

17 Q Is he the same Mr. Faigin who had previously been
18 Mr. Holzer's attorney?

19 A Yes, sir.

20 Q And he was the same Mr. Faigin who had attempted
21 to foreclose on your stock?

22 A Yes, sir.

23 MR. COHN: Your Honor, I think we know there is
24 only one Mr. Faigin.

25 THE COURT: All right. He was the Mr. Faigin you

1 jhbr 4 Goberman-redirect

2 testified about in connection with the Holzer trans-
3 action?

4 THE WITNESS: Yes, sir. he is the same party.

5 THE COURT: All right.

6 Q Do you know when he became Mr. Parness' lawyer,
7 Mr. Faigin?

8 A To the best of my knowledge, it was shortly after
9 Mr. Holzer was paid.

10 Q Did you have any contact with this Mr. Faigin when
11 he was Mr. Parness' lawyer?

12 A Yes, sir.

13 Q Can you tell us in general what those contacts
14 were about?

15 A Well, I pleaded with him to try to induce the
16 repayment of that \$20,000 that we had in question on several
17 occasions and he said he would see what he could do about
18 it.

19 Q Is that the \$20,000 that you said you loaned to
20 the casino through Mr. Blandino?

21 A Yes, sir.

22 Q Was Mr. Faigin able to --

23 THE COURT: I don't know about this being able. Did
24 he?

25 MR. MC GUIRE: Thank you, your Honor. The question

1 jhbr 5 Goberman-redirect

2 was inappropriate.

3 Q Did Mr. Faigin do anything in response to your re-
4 quests of him?

5 A He told me he would take the matter up and I never
6 got the final result. Well, the final result, I never got
7 the \$20,000.

8 Q Do you know whether Mr. Faigin was present during
9 any of the occasions which you have testified about where
10 incidents in connection with your ownership of the hotel
11 stock --

12 THE COURT: That is an awfully difficult question.

13 Q --took place on the island of St. Maarten?

14 MR. MC GUIRE: It is a general question, your
15 Honor. I am leading up to something.

16 THE COURT: I know, but I think it is too general.
17 You want to ask him was Mr. Faigin at St. Maarten at any
18 time, you can ask him that, and then you can ask him whether
19 he was in on the discussion.

20 Q Would you answer his Honor's question?

21 A Yes, sir, he was in St. Maarten.

22 Q Do you remember when he was in St. Maarten?

23 A On the occasion that I signed those papers, whatever
24 the date was, June, prior to June. He was there on three or
25 four occasions.

1 jhbr 6 Goberman-redirect

2 Q Do you know which papers he was in on the signing
3 of?

4 A Yes, sir.

5 Q Can you identify them if they are shown to you?

6 A I believe I can, sir.

7 Q Do you know whether they are any of the documents
8 that are in evidence?

9 A Yes, sir, they are.

10 Q I am going to show all of the exhibits that are
11 in evidence and suppose you tell us which ones you associate
12 with Mr. Faigin.

13 MR. COHN: Your Honor, to save time, we know the
14 numbers. 77, 78 --

15 THE COURT: That's right. I have them, yes.

16 A Well, this is prior.

17 You are talking about after he was out of the employ
18 of Mr. Holzer?

19 Q Yes, please, while he was Mr. Parness' lawyer.

20 A Yes, sir.

21 I would say from 77 on.

22 MR. MC GUIRE: The witness has identified
23 Exhibit 77, which is a letter bearing the date March 15, 1971 from
24 Barbara Landew and Stanley Amsterdam to Allan Goberman,
25 Exhibit 78, which is a letter bearing the date March 18,

1 jhbr 7 Goberman-redirect

2 1971 from Barbara Landew and Stanley Amsterdam to Allen
3 Goberman, Exhibit 79, which is a letter of the next day from
4 Barbara Landew and Stanley Amsterdam to the managing
5 director of the St. Maarten Isle Hotel.

6 Q By the way, are those letters that you received,
7 Mr. Goberman?

8 A No. They were the letters that were handed to me
9 down in the island.

10 Q What if anything did Mr. Faigin have to do with
11 those letters?

12 A I thought he typed them.

13 THE COURT: I didn't hear your answer.

14 A I thought he typed them or had them typed.

15 MR. MC GUIRE: The witness has also identified
16 Exhibit 80, which is a letter from Mr. Goberman to Landew and
17 Amsterdam dated April 2, 1971, Exhibit 81 and Exhibit 82, which
18 are letters to Amsterdam and Landew respectively dated
19 the next day, Exhibit 83, which is a letter from Mr.
20 Goberman to the St. Maarten Isle Hotel Corporation.

21 Q Mr. Goberman, what if anything did Mr. Faigin have to
22 do with those documents, to the best of your recollection?

23 A To the best of my recollection, he had all those
24 documents typed.

25 THE COURT: This was in St. Maarten?

1 jhbr 8 Goberman-redirect

2 THE WITNESS: Yes, sir.

3 MR. MC GUIRE: The witness has also identified
4 Exhibit 84 and Exhibit 89. Exhibit 84 is a series of
5 notes which I think we can agree total \$3 million. They
6 are bearer notes dated as of November 15, 1970.

7 Q Exhibit 89, is that agreement relating to \$50 a
8 day that you were supposed to receive from the casino, is
9 that accurate?

10 A Yes, sir.

11 Q What if anything do you recall that Mr. Faigin had
12 to do with those?

13 A I don't believe Mr. Faigin actually typed those or
14 had them typed, but he was there at the time it was typed
15 and he was in on any conferences that had anything to do with
16 those.

17 Q By the way, Mr. Goberman, did some of those
18 documents bear incorrect dates?

19 A Yes, sir.

20 Q Tell us about that, if you would.

21 A Well, wherever -- well, some were predated
22 in order to make them appear as something that they were
23 not. Quite a number of them were predated.

24 Q Did you ever have any discussion with Mr. Faigin
25 on the subject of why that predating was done?

1 jhbr 9

Goberman-redirect

66 507

2 A I don't believe I did..

3 Q Did you have any discussion with Mr. Parness or with
4 Mrs. Parness on that subject?

5 A Mr. Parness.

6 Q What was your discussion with him on why that
7 predating was done?

8 A Sign it. That's it.

9 Q A while ago we were talking about this lawyer
10 Howard Rubin and you say it was your impression that he had
11 gotten paid either by Mr. Parness or by Mr. Faigin.

12 A Yes, sir.

13 Q Do you know of your own knowledge how he got paid?

14 A I think he received some checks from Mr. Faigin.
15 Whether he received any directly from Mr. Parness, I am not
16 sure.17 Q Do you know how much he got paid? And I am talk-
18 ing about the spring of 1971 now, the events after that.19 A I know of one check of \$1,000 and I believe he
20 was promised 5,000 more. I am not sure whether he got the
21 checks or not.

22

23

24

25

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jh: mg 1

Goberman-redirect

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Q I would like to show you Exhibit 194 for iden-

3

tification, Mr. Goberman.

4

These are three checks.

5

By the way, have I ever showed you these checks

6

before?

7

A No, sir.

8

Q Do you recognize them?

9

A Yes, sir. Yes, I -- I don't recognize-- I have

10

never seen them before. I recognize the name, St. Maarten

11

Isle Hotel.

12

MR. MCGUIRE: We offer these checks in evi-

13

dence.

14

MR. COHN: No objection to any of these, your

15

Honor.

16

THE COURT: All right. Received.

xx

17

(Government's Exhibit 194 received in evidence.)

18

MR. MCGUIRE: Exhibit 194, ladies and gentlemen,

19

contains three checks. The first one is dated June 3,

20

1971. It is in the amount of \$2500. It is payable to

21

Howard Rubin. It is signed Barbara Landew and it is drawn

22

on the account of Olympic Sports Club, Inc. at the National

23

Newark and Essex Bank, West Orange, New Jersey.

24

Q Is it correct, Mr. Goberman, to say that June

25

3, 1971 was just six days before you gave your first

1 jh:mg 2 Goberman-redirect

2 deposition in Philadelphia?

3 A Yes, sir.

4 MR. McGUIRE: The next check is dated September
5 29, 1971. It is drawn on the account of St. Maarten Isle
6 Hotel at the National Newark and Essex Bank, West Orange,
7 New Jersey. It is for \$1,000. It is payable to Howard
8 Rubin and it is signed Barbara Landew. It is endorsed on
9 the reverse Howard Rubin, for deposit only.

10 The third check in the group is dated July 29,
11 1971. It is on the account of Olympic Sports Club, Inc.,
12 at the National Newark and Essex Bank. It is in the
13 amount of \$2500, signed Barbara Landew, endorsed on the
14 reverse for deposit only.

15 Q Mr. Goberman, on cross-examination Mr. Cohn
16 asked you a number of questions on whether you had made
17 what he called a formal plea bargaining deal with the
18 government and whether you had cooperated with the govern-
19 ment in connection with preparing for testimony in this
20 case.

21 Do you recall those questions and your answer?

22 A Yes, sir.

23 Q When were you first indicted by the United States
24 Government, by the grand jury?

25 A I don't remember the exact date.

1 jh:mg 3

Goberman-redirect

61 510

2 Q If I showed you the indictment would it help re-
3 fresh your recollection?

4 A Yes. I would appreciate that.

5 MR. MCGUIRE: May this be marked as an exhibit
6 for identification.

xx 7 (Government's Exhibit 195 marked for identi-
8 fication.)

9 Q I would like to show you what has been marked
10 as Government's Exhibit 195, Mr. Goberman.

11 That purports to be certified copies of federal
12 court records in Pennsylvania.

13 Can you take a look at that and tell us when you
14 were first indicted? Just the month will be good enough.

15 A Would that be June 1971? I can't see -- there
16 are several dates on here.

17 Q I direct your attention to the first line.

18 A June 24, 1970.

19 Q 1970?

20 A Yes, sir.

21 Q Was that at a time when you were still managing
22 director of and in charge of the St. Maarten Isle Hotel?

23 A I don't know whether I was managing director at
24 that time, but I was owner in charge of the hotel at that
25 time, yes, sir.

jh:mg 4

Goberman-redirect

00 511

1 Q And it was before you had any dealings with Leonard
2 Holzer?
3

4 A Yes, sir.

5 Q And it was at a time when you have told us you
6 had not made an arrangement with Milton Parness for him
7 to take over the casino, is that correct?

8 A I don't believe I knew him at that date.

9 MR. COHN: Excuse me, your Honor.

10 May I inquire-- I missed it -- what was the date?

11 MR. MCGUIRE: June 24, 1970.

12 MR. COHN: Thank you.

13 Q Is it a fact, Mr. Goberman, that you were tried
14 on that charge in Pennsylvania in November of 1970?

15 A Yes, sir.

16 Q Is it also the fact that you were convicted on
17 that charge and that the judge handed down his decision
18 on June 11, 1971?

19 A That is correct.

20 Q Two days after you gave your deposition in
21 Philadelphia?

22 A Yes, sir.

23 Q Do you recall that day?

24 A Yes, I do.

25 Q When you gave your deposition in Philadelphia on

1 jh:mg 5

Goberman-redirect

11 512

2 June 9, 1971 was your mind entirely on that deposition?

3 MR. COHN: Object to that.

4 THE COURT: I sustain an objection to the form
5 of that question.

6 At the time of the deposition the judge had not
7 decided this, is that right?

8 THE WITNESS: But I was told he was going to two
9 days later.

10 MR. MCGUIRE: May this be marked as Government's
11 Exhibit 196.

xx 12 (Government's Exhibit 196 marked for identi-
13 fication.)

14 Q I would like to show you Exhibit 196, which pur-
15 ports to be a copy of the deposition that you gave on June
16 9, 1971.

17 Do you remember Mr. Cohn asked you some questions
18 about that?

19 A Yes, sir.

20 Q About your testimony and the answers you gave,
21 were they truthful or not?

22 A Yes, sir.

23 Q What did you say at the place I am pointing to
24 on page 9?

25 A "I don't remember. My mind really isn't on this

1 jh:mg 6

Goberman-redirect

513

2 right now. I am just doing the best I can for you."

3 Q As you sit there today, Mr. Goberman, do you
4 remember having a discussion with your lawyer about the
5 terms on which you would plead guilty to the second indict-
6 ment that the federal government brought against you?

7 Did you or didn't you?

8 A Are you speaking of the court-appointed attorney?

9 Q That's the one.

10 A It seemed that his interest was for me to plead
11 guilty.

12 Q Please, no conclusions. Just tell us whether you
13 had a discussion on the terms on which you would plead
14 guilty.

15 A I knew of no terms. He just wanted me to plead
16 guilty, stating that he felt that he could get me proba-
17 tion if I plead guilty, and I refused to go along on that.

18 Q Did you in fact ultimately plead guilty?

19 A I finally gave up. I couldn't fight any longer.

20 Q Did you in fact ultimately receive a sentence of
21 probation?

22 A Yes, sir.

23 Q When you pleaded guilty do you remember what date
24 that was?

25 A No, sir.

1 jh:mg 7

2 Q Mr. Cohn and I, I think, are prepared to stipu-
3 late, if you will accept it, Mr. Goberman, that it was
4 December 7, 1972, and that you were sentenced about a month
5 later.

6 MR. COHN: January 4, 1973.

7 Q Would you accept that, Mr. Goberman?

8 A Yes, sir, I would.

9 Q Do you remember when you were indicted on that
10 second federal charge, which had to do with your tax re-
11 turns, did it not?

12 A I don't remember the exact date.

13 Q If I showed you a copy of the indictment would
14 that help?

15 A Yes, sir.

16 MR. COHN: I will stipulate the date, your Honor.
17 The second indictment or the first income tax indictment
18 was August 30, 1972.

19 MR. McGUIRE: So stipulated.

20 MR. COHN: The criminal information was November
21 28, 1972.

22 MR. McGUIRE: Agreed.

23 THE COURT: All right.

24 Q Mr. Goberman, between the time you were convicted
25 on your first indictment and the time you were indicted for

1 jh:mg 8

Goberman-redirect

515

2 the second time did you have any discussions with anybody
3 representing prosecuting authorities in the government?

4 A I don't believe I did.

5 Q The date on which you pleaded guilty was December
6 7, 1972. Let's see if you can keep that in mind.

7 You remember that date?

8 A You told me that was the date. I didn't remember
9 it. I will accept that.

10 Q See if you can keep it in your mind, December 7,
11 1972.

12 The date on which you were convicted and sentenced
13 on your first charge was June 11, 1971, approximately a
14 year and a half earlier.

15 Can you keep that date in your mind?

16 A I am trying--

17 Q Do you have it fixed in your mind now?

18 A Yes.

19 Q Let me ask you again, between those times did you
20 talk to anybody in the government who was in the position
21 of a prosecuting authority, and by that I mean Mr. Dowd,
22 Mr. Campbell or Mr. Glaze from the Internal Revenue
23 Service, in the year and a half between June of 1971 and
24 December of 1972?

25 A Well, I would have to try to remember the date that

1 jh:mg 9 Goberman-redirect

2 I received a subpoena to come to the grand jury. 516

3 I don't remember what date that was.

4 Q Doyou have trouble remembering dates, Mr.Goberman?

5 A It all depends how I feel. It depends. I am
6 not as young as I used to be and I have gone through a
7 lot. So I would say some time during the day it is a
8 little difficult for me to be as fresh as I am at other
9 times.

10 Q All right.

11 A And I just don't remember --

12 Q You talked about a subpoena to appear before a
13 grand jury?

14 A Yes, sir.

15 Q I think you said that that was the first time you
16 talked to any prosecuting authorities about the St. Maarten
17 Isle Hotel?

18 A Yes, sir.

19 Q Is that right?

20 A Yes, sir.

21 Q I think Mr. Cohn and I can agree that that was
22 October 26, 1971. That is the date of the subpoena..

23 MR. MCGUIRE: So stipulated?

24 MR. COHN: Surely.

25

5a am

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Goberman-redirect

517

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Q Now that was about six months after you were first convicted?

3

4

A Then that would be between the two dates that you told me to try to remember.

5

6

THE COURT: In the 18-month period?

7

THE WITNESS: Yes, sir.

8

So I appeared before the grand jury.

9

Q You appeared before the grand jury in Brooklyn?

10

A Yes, sir.

11

Q And after that do we have your testimony correctly on cross-examination you had a number of contacts with various people from the government?

13

14

A Yes, sir.

15

Q Including Agent Glaze, who is sitting back there?

16

A Yes, sir.

17

Q And Agent Eisler who is sitting back there?

18

A Yes, sir.

19

Q And Mr. Campbell from Washington?

20

A Yes, sir.

21

Q And I think you mentioned a Mr. Friedman from Washington?

22

23

A Yes, sir.

24

Q You talked to all of those people after you were subpoenaed to the grand jury?

25

1 eb:mg 2

Goberman-redirect

2 A Yes, sir.

3 Q And there came a time when you ultimately testified
4 before a grand jury here in New York?

5 I think you told us that.

6 A Yes, sir.

7 Q Do you remember when that was?

8 A I don't remember the date.

9 Q Would July 27, 1972 be --

10 A You would have to refresh -- at this time I would
11 say you would have to refresh my memory.

12 Q I would like to show you a document which has
13 already been marked as Exhibit 3503 for identification.

14 Take a look at it.

15 A Is that the grand jury --

16 MR. MCGUIRE: I think Mr. Cohn and I will agree
17 that that happens to be a transcript of the grand jury
18 testimony.

19 Q Do you have any doubt that the date on there,
20 July 27, 1972 is the date that appears thereon?

21 A That's right.

22 Q Now, was that grand jury appearance before or after
23 a great many contacts with representatives of the govern-
24 ment?

25 THE COURT: That is a hard question.

1 eb:mg 3

Goberman-redirect

2 MR. MCGUIRE: I will rephrase it.

3 THE COURT: Ask him did you talk to some of these
4 government people before that, before July 27?

5 THE WITNESS: Yes, sir.

6 THE COURT: Did you talk to some of them after that?

7 THE WITNESS: Yes, sir.

8 THE COURT: All right.

9 Q Now, was it before or after that grand jury appear-
10 ance that you were indicted for the second time?

11 A Yes, sir, after.

12 Q Before or after?

13 A After, if I remember.

14 Q Within about a month, wasn't it?

15 A Yes, sir.

16 Q Some deal, right, Mr. Goberman?

17 THE COURT: All right, don't comment on that.

18 MR. COHN: Your Honor, may we see you at the side
19 bar for a minute?

20 THE COURT: I don't think so. No, the jury will
21 disregard that comment. It was a gratuitous comment.

22 Q Anyway, we have it clearly that you were indicted
23 after you appeared before the grand jury?

24 A Yes, sir.

25 Q Do you remember that distinctly?

1 eb:mg 4

Goberman-redirect

2 A Yes, sir.

3 Q You told us about a lawyer named William Hamilton.

4 Do you remember Mr. Cohn's questions to you
5 about William Hamilton?

6 A Yes, sir.

7 Q And I think on cross-examination you testified
8 that he was the lawyer that had been hired by Milton Parness?

9 A Yes, sir.

10 Q To represent you at the time of a foreclosure of
11 the Holzer loan?

12 A Yes, sir.

13 Q Now, did you ever pay Mr. William Hamilton?

14 A Yes, sir.

15 Q How much did you pay him?

16 A I paid him \$2500.

17 Q When was that?

18 A Well, that was some time prior. I don't remember.
19 I would say approximately six months before, six to eight
20 months before this Holzer situation.

21 Q Did you pay Mr. Hamilton in connection with Leonard
22 Holzer?

23 A No, sir.

24 Q You had previously had contact with him as a
25 lawyer and you paid him about other matters?

1 eb:mg 5 Goberman-redirect

2 A Yes, sir.

3 Q Did you pay Mr. Hamilton in connection with the
4 Holzer matter?

5 A No, sir.

6 Q Do you know who did, if anybody?

7 A I never gave it a thought.

8 THE COURT: You don't know if he was paid?

9 THE WITNESS: Or whether he was paid or not. I
10 don't know who paid him. I don't know whether he was paid
11 or not.

12 THE COURT: Right.

13 MR. MCGUIRE: We offer Exhibits 43 and 57 for
14 identification into evidence. And also Exhibit 35 for
15 identification.

16 MR. COHN: Voir dire, please?

17 THE COURT: Yes.

18 VOIR DIRE EXAMINATION

19 BY MR. COHN:

20 Q Would you please look at these three documents,
21 Mr. Goberman, and just tell us whether or not you have
22 ever seen them before. I don't mean in the--

23 A I didn't hear you. Whether or not what?

24 Q Whether or not you had ever seen them before the
25 preparation for this trial or before this trial. Just yes

1 eb:mg 6 Goberman-redirect

2 or no.

3 A I don't believe I have seen these before.

4 MR. COHN: I don't think it is a proper offer,
5 your Honor.

6 THE COURT: You can't have that in front of the
7 witness then.

8 MR. McGUIRE: If Mr. Cohn objects, I will with-
9 draw it.

10 Q Mr. Cohn questioned you extensively about a
11 second deposition that you gave, Mr. Goberman, and that,
12 again, took place in Philadelphia.

13 A Yes, sir.

14 Q Do you recall that? That was on June 9, 1972.

15 A Yes, sir.

16 Q Now, who was representing you at that time?

17 A No one. I wasn't paying anybody to represent me
18 at that time.

19 Q Was there a lawyer there with you?

20 A I think Mr. Rubin might have been there.

21 Q I'm going to show you a copy of Exhibit 3502 for
22 identification, Mr. Goberman, and ask you if that refreshes
23 your recollection as to the lawyer that was present with
24 you.

25 A Yes, sir.

1 eb:mg 7

Goberman-redirect

2 Q Who was it?

3 A The same Mr. Rubin.

4 Q The same Mr. Rubin?

5 A Yes, sir.

6 Q Now you said you had not paid Mr. Rubin in June
7 of 1971 but you thought he had been paid by Parness or Faigin?

8 A Yes sir.

9 Q Did you pay him by June of 1972?

10 A I had no funds to pay Mr. Rubin.

11 THE COURT: So you didn't pay him?

12 THE WITNESS: No, sir.

13 Q Do you know who did?

14 A If he received any payment at all, I was under the
15 impression he received it from Mr. --

16 MR. COHN: Your Honor, I object.

17 A He told me he received some money.

18 THE COURT: He told you he received some money
19 and that's all you know?

20 THE WITNESS: No, since then I found out that he
21 did receive it from Mr. Faigin.

22 MR. COHN: I am interested in if he had a conver-
23 sation with Mr. Parness, and if not, then I am not inter-
24 ested in it.

25 THE COURT: All right.

1 eb:mg 8

Goberman-redirect

2 Q Did you ever have a discussion with Mr. Parness
3 about Mr. Rubin's fees?

4 A Yes, sir.

5 Q When did that occur, do you remember?

6 A I don't remember the date, sir.

7 Q Well, was it around the time of any of these
8 depositions? Does that help?

9 A It is very possible.

10 Q Can you place the date any closer than that?

11 A I remember the conversation but I don't remember
12 the date.

13 Q All right, sir.

14 Where did the conversation take place?

15 A Over the telephone.

16 Q Between you and Mr. Parness?

17 A Yes, sir.

18 Q And what did you say and what did Mr. Parness
19 say?

20 A That Howard Rubin needs some money, would he give
21 him some money on the checks, on my weekly, or the money
22 that he owed me on my payroll checks that I never cashed,
23 I couldn't cash.

24 Q And what did Mr. Parness say?

25 A I don't remember what he said but I believe he did,

1 eb:mg 9 Goberman-redirect

2 to the best of my knowledge, give him some money.

3 Q Was this the same Mr. Rubin who you testified
4 put papers in front of you to sign in your bankruptcy
5 proceeding?

6 A Yes, sir.

7 Q And when you signed those papers which Mr. Cohn
8 asked you about did you read them first?

9 A No, sir.

10 Q Did you trust Mr. Rubin?

11 A Unfortunately, yes, sir.

12 Q We were going to get into this deposition that
13 was taken in June of 1972.

14 Mr. Cohn asked you some questions about what
15 you testified to on page 46 of that deposition.

16 Now I'd like to show you page 46, Mr. Goberman.
17 Read it to yourself.

18 And the question I'm going to ask you is whether
19 the answers that you gave on page 46 are a complete and
20 accurate account of what happened on that day, February
21 4, 1971.

22 (Pause.)

23 A This one page could not cover all the events of that
24 day.

25 Q You didn't even mention Mr. Parness' name in there,

1 eb:mg 10

Goberman-redirect

526

2 did you?

3 MR. COHN: I object, your Honor.

4 THE COURT: I sustain the objection to that.

5 You say you have read that, have you, sir, Mr.

6 Goberman?

7 THE WITNESS: Yes, sir.

8 THE COURT: And that is not a complete statement
9 of what happened?

10 THE WITNESS: No, sir.

11 Q Mr. Goberman, did you have any contact with Mr.
12 Milton Parness on that day?

13 THE COURT: On what day?

14 MR. McGUIRE: February 4, 1971.

15 Q The day you went to New Jersey.

16 A Of course. Yes.

17 Q Where did you start out the business day?

18 A In the office at 1650 Broadway.

19 Q Mr. Parness' office?

20 A The name on the door is St. Maarten Isle Hotel.

21 Q Was it the office that Mr. Parness occupied?

22 A Right.

23 Q And did you have various contacts with him during
24 that day?

25 A Yes, sir.

1 eb:mg 11

Goberman-redirect

2 Q And did you testify about any of those contacts
3 here on page 46?

4 A No, sir.

5 Q Mr. Cohn cross-examined you at some length this
6 morning about gambling debts that were due to the casino from
7 a man named Selik and a man named Norber, do you remember
8 that?

9 A Yes, sir.

10 Q Did you ever have any conversations with Mr. Parness
11 about those gambling debts?

12 A Yes, sir.

13 Q Can you tell us what you said to Mr. Parness and
14 what he said to you?

15 A The first conversation --

16 THE COURT: When would that have been, do you re-
17 member, sir?

18 THE WITNESS: I would say that the first time I
19 saw Mr. Selik gamble, and I said that "This looks like a
20 pretty wild character here. Does he usually win or lose?"

21 And he said, "He invariably loses."

22 And then when I saw the report on the sheet and
23 saw that he lost fifty some odd thousand dollars I said,
24 "Are you sure you can get this money?"

25 And he said, "This man is as good as his word and

1 eb:mg 12

Goberman-redirect

2 I have known him for many years and he can go to Las Vegas
3 and get all the credit he wants."

4 Q Do you know whether or not any money was ever
5 collected from Mr. Selik?

6 A Well, I couldn't tell that. I mean, that was out
7 of my hands. That's what I have been trying to find out.

8 I do know that \$60,000 was sent in supposedly to
9 be delivered to me.

10 Q Now, you say that \$60,000 was sent in?

11 A Yes, sir.

12 Q I have a number of questions I would like to ask
13 you about that, Mr. Goberman, but let's start with this
14 one.

15 Where did you first hear about that \$60,000?

16 A I believe Mr. Parness told me about it in New
17 York.

18 Q And what did Mr. Parness tell you?

19 MR. McGUIRE: Excuse me. Question withdrawn.

20 Q Do you remember when it was that you had this
21 conversation with Mr. Parness in New York?

22 A I think it was about a week before the Holzer
23 note was due, whenever that would have been.

24 Q Some time in late January, possibly early February,
25 1971?

1 eb:mg 13

Goberman-redirect

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2 A Yes, sir. I would say it was late January, if the
3 payment was due February 5th, I would say about a week be-
4 fore that.

5 Q Okay.

6 And where did the conversation take place?

7 A I believe at 1650 Broadway.

8 Q What did Mr. Parness say to you on that occasion?

9 A That Sam Norber is bringing in \$60,000, and that
10 "I will have more money from them shortly because Selik
11 promised me."

12 Q So did he say, in substance, that Sam Norber was
13 bringing in Selik's money?

14 MR. COHN: Your Honor, I don't think we want what
15 he said in substance. I think if the witness can tell us
16 what Parness said and what he said -

17 THE COURT: Yes, I am a little confused about
18 that.

19 Tell us again, what did Mr. Parness say to you
20 about the \$60,000?

21 THE WITNESS: That Mr. Norber, as a messenger,
22 was bringing in at least \$60,000. At first it was going
23 to be \$90,000 but at least \$60,000 against the money owed
24 by that particular junket.

25 Q And did Mr. Parness later have any other discussion

1 eb:mg 14

Goberman-redirect

2 with you on the same subject?

3 A Yes, sir.

4 Q Can you tell us how soon afterwards that next
5 discussion occurred?

6 A I believe it was two or three days after that
7 when he advised me that Mr. Norber's -- the money, rather,
8 that Mr. Norber was carrying, was \$60,000, and it was
9 taken from him by, I believe, the term was Treasury Agents,
10 and he told me the reason why.

11 Q What was your reaction when he told you that?

12 MR. COHN: I don't want the reaction. If
13 there was a conversation --

14 THE COURT: Yes. What did you say to Mr. Parness?

15 Q What did you say to him?

16 A I don't know, but something along these lines --
17 I don't really remember what I said. And then later I
18 said, "How can I get this money?"

19 Q And did Mr. Parness say anything to you?

20 A Yes.

21 Q About how to get the money?

22 A Yes, sir.

23 Q What did he say?

24 A He told me to go to a law firm. He gave me the
25 name. It was a firm that had three or four names on it and

1 eb:mg 15

Goberman-redirect

2 the only name I do remember was either Liebowitz or
3 Lefkowitz. I think it was Lefkowitz because I believe,
4 was there not, an Attorney General, or somebody in the State
5 of New York by that name?

6 THE COURT: The Attorney General of the State of
7 New York is Mr. Louis Lefkowitz.

8 THE WITNESS: Right.

9 A And then this attorney's name was Lefkowitz.

10 Q And you went to Mr. Lefkowitz' office, you say?

11 A Yes, sir.

12 THE COURT: Where was that?

13 THE WITNESS: In Manhattan some place. I don't
14 remember where.

15 Q Did you say that Mr. Parness had instructed you
16 to do that?

17 A Instructed me to do that, yes, sir, in order to
18 retrieve the \$60,000, to make motions.

19 Q Did Mr. Parness instruct or suggest or tell you to
20 do anything else at that time?

21 A Well, to go to these lawyers and discuss it with
22 them and they will give me certain papers to sign which
23 would enable me to recover the \$60,000.

24 Q I see. So what did you do?

25 A I went to the law firm.

1 eb:mg 16

Goberman-redirect

2 Q And what did you do there?

3 A I discussed the matter with two lawyers whose
4 names I forget, and they suggested to me--

5 MR. COHN: Excuse me, your Honor.

6 I don't mind if it is a result of a conversation
7 that he did something.

8 THE COURT: I think that is fair.

9 Don't tell us what these gentlemen whose names
10 you don't remember, but what happened after you had this
11 conversation with them.

12 THE WITNESS: They said--

13 THE COURT: Don't tell us what they said.

14 Q Please, Mr. Goberman, try to pay attention to his
15 Honor's instructions. He is trying to keep this on a
16 straight and narrow path and we don't want any answers that
17 you volunteer.

18 Just tell us what you did after this conversation
19 with these lawyers.

20 A They wanted me to sign some papers and I refused
21 to sign them. That is what I did.

22 Q Did you ever get the \$60,000?

23 A No, sir.

24 Q Did you ever talk to Mr. Parness about it again?

25 A Yes, sir.

1 eb:mg 17

Goberman-redirect

2 Q What conversation did you have with him?

3 A "Are you going to get the \$60,000?"

4 "We will get it."

5 And that was that.

6 Q He assured you that you would get it?

7 A Eventually.

8 Q Did he give you a time?

9 A No, sir.

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Q How long did he continue to make these promises?

A I beg your pardon?

Q How long did he continue to make these promises?

A Well, I never pressed it. Once I knew the government had it I didn't press it too much.

MR. MC GUIRE: Nothing further.

MR. COHN: Your Honor, I am waiting for some papers which I am going to need in the course of my very brief recross examination. I was wondering if it would suit your convenience -- I know you have to hold a little hearing with us on a legal point, and if we could do it now and --

THE COURT: Well, all right. You would rather break for lunch now?

MR. COHN: If it wouldn't inconvenience the Court.

THE COURT: All right. Ladies and gentlemen, let us break for lunch. Is that agreeable to you?

THE FOREMAN: All right, your Honor.

THE COURT: All right. Let us reconvene then at a quarter of two. We will recess now for lunch until a quarter of two.

(Jury left the courtroom.)

(In the robing room. Defendant and all counsel

* * *

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Goberman-recross

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AFTERNOON SESSION

2:00 p.m.

MR. COHN: Your Honor, I have these uncollected markers. We have not had time to make any copies of them.

THE COURT: All right, you have got them.

MR. COHN: Mr. McGuire, I am turning over to you an envelope containing a pile of uncollected markers. We didn't have time to make copies of them.

I would appreciate it if you could make photostats of them and return the original or the photostats to us and give me a receipt for them.

MR. MCGUIRE: Certainly. We will do that.

THE COURT: All right, let's get moving.

A L L A N N. G O B E R M A N, resumed:

(In open court, jury present.)

THE COURT: You may proceed, Mr. Cohn.

RECROSS-EXAMINATION

BY MR. COHN:

Q Mr. Goberman, how long have you known Howard Rubin, the lawyer you testified about on redirect examination this morning?

A I think he came to Lancaster about two or three years prior to all these events here to work in an office that I had already been doing business with.

1 eb:mq 2

Goberman-recross

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2 Q What was the name of that office?

3 A Maygrove, Stork and then he joined and they added
4 his name to it.

5 Q And it became Maygrove, Stork & Rubin?

6 A Yes, sir.

7 Q For how long a period of time had Maygrove & Stork
8 represented you or any of your interests legally?

9 A I'm sorry, I didn't get your question.

10 THE COURT: How long had they been your lawyers is
11 what he is trying to say.

12 A For a short time.

13 THE COURT: They were your lawyers for a short time
14 before Mr. Rubin came around?

15 THE WITNESS: Yes, sir.

16 Q Can you tell us what you mean by a short time?

17 A Approximately about a year.

18 Q About a year?

19 A Yes, sir.

20 Q And then Mr. Rubin joined them?

21 A Yes, sir.

22 Q Did Mr. Rubin thereafter do legal work for you?

23 A Yes, sir.

24 Q Did he appear for you in various matters?

25 THE COURT: I don't know as he knows what that

1 eb:mg 3

Goberman-recross

2 means.

3 Q Mr. Rubin, did he do legal work for you, is that
4 correct?

5 A Yes, sir.

6 Q Had Mr. Rubin been doing legal work for you in
7 the period of two years preceding the events we have been
8 talking about in this case?

9 A He did very little of it. Someone else in the
10 office did most of it. It was real estate work and he
11 wasn't acquainted with real estate.

12 Q Did he do any legal work for you in the two years
13 before the events?

14 A I said yes.

15 Q All right.

16 To your knowledge, did Mr. Rubin ever represent
17 Mr. Milton Parness in his life in any case?

18 A In any case -

19 THE COURT: I don't know whether he can answer
20 about any case.

21 Q Referring to your testimony in this courtroom
22 this morning, do your knowledge did Howard Rubin ever
23 handle any legal matter for Milton Parness?

24 A I don't argue with you. I don't know what you
25 call legal matter.

1 eb:mg 4

Goberman-recross.

2 THE COURT: As far as you know, was he ever Milton
3 Parness' lawyer?

4 THE WITNESS: I know he was following Mr. Parness'
5 instructions for which he got paid.

6 THE COURT: The question is whether you know whether
7 or not he had ever been Mr. Parness' lawyer.

8 I think that is the question. Did you ever know
9 if he was?

10 THE WITNESS: He was acting as his lawyer against
11 me.

12 THE COURT: Okay.

13 MR. COHN: Your Honor, may I ask for an answer
14 from this witness?

15 Q Do you know whether or not Howard Rubin ever
16 represented Milton Parness in any legal capacity?

17 A Yes, sir.

18 Q Did he?

19 A I said "Yes, he did."

20 Q What case?

21 A My case.

22 Q In your case?

23 A Yes.

24 Q You are saying because Mr. Parness gave you the
25 money to pay Rubin, that that means Rubin was listening to

1 eb:mg 5

Goberman-recross

2 Mr. Parness, that's the substance of what you want to tell
3 us here?

4 A That is not at all what I am saying.

5 Q Leaving that out, do you know of any matter in which
6 Howard Rubin of Lancaster, Pennsylvania, ever represented
7 Milton Parness?

8 A Yes, sir.

9 Q Name the case.

10 A I was the case.

11 Q Other than you?

12 A Well, I was only interested in what he did with
13 me.

14 THE COURT: Answer the question.

15 Do you know if he represented him in any other
16 case?

17 THE WITNESS: I don't know. I know that he rep-
18 resented Mr. Parness against me.

19 Q Now, Mr. Goberman, what was the case in Pennsylvania
20 in which Mr. Rubin appeared for you, the one concerning
21 which Mr. McGuire asked you and I did about the--

22 A I didn't say he appeared in any case.

23 Q Mr. Goberman, when you went to appear for the two
24 depositions we have been talking about for four days in
25 this courtroom, June of 1971 and June of 1972, on each

1 eb:mg 6

Goberman-recross

2 occasion did you come into the room with a alwyer named
3 Howard Rubin?

4 A Yes, sir.

5 Q And were you asked on the record whether Howard
6 Rubin represented you?

7 A No, sir, I wasn't asked.

8 Q Were you asked whether he represented you and did
9 Mr. Rubin turn to you and say, "Al," or "Allan, do I repre-
10 sent you in this proceeding?"

11 And you said, "Yes, you do."

12 A No, I said "No, you don't."

13 Q Referring to the first of the two depositions,
14 June 9, 1971 -

15 THE COURT: Does that have an exhibit number?

16 THE WITNESS: Are you talking now about '71 or '72?

17 Q If I say I am talking about '71, sir, I am talking
18 about '71.

19 A Well, then my answer would be different.

20 Q June 9, 1971, as the very depositon opened, did
21 it open exactly as follows:

22 MR. COHN: Your Honor, it is 196 for identifica-
23 tion.

24 " Allan N. Goberman, having been first duly
25 sworn, was examined and testified as follows:

1 eb:mg 7

Goberman-recross

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2 "By Mr. Harvey:

3 "Q Mr. Goberman, does Mr. Howard Rubin represent you
4 in this lawsuit, that is, the lawsuit in the federal court
5 captioned Louis Hoffman against Allan Goberman, Civil Action
6 81277?

7 "A I don't know whether he does or not. I believe
8 he is representing me here today."

9 Did you give that answer to that question?

10 A I did but I didn't know you were referring to
11 that one. I thought you were referring to the one in 1972,
12 the second deposition.

13 Q Referring now to the second deposition, June 9,
14 1972, that is 3502 for identification, would you look
15 at the cover and tell the Court whose name appears as your
16 counsel?

17 A I have seen this before. Mr. Rubin's name is on
18 there.

19 Q And was Mr. Rubin with you during that entire
20 deposition?

21 A Not during the entire deposition, no, sir.

22 Q During part of the deposition?

23 A Yes, sir.

24 Q Did you have any other lawyer present there that
25 day representing you?

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Goberman-recross

567

2 A No, sir.

3 Q By the way, in this case in Philadelphia the
4 plaintiff-- withdraw that.

5 The case in Philadelphia --

6 A What case?

7 Q I am about to ask you.

8 THE COURT: He is talking about the Hoffman case.

9 Q In Philadelphia was a suit by Mr. Hoffman concern -
10 ing certain stock in St. Maarten Isle Hotel Company wherein
11 there were claims between you and him as to who owned the
12 stock?

13 A Yes, sir.

14 Q And Mr. Parness was not a party defendant or
15 plaintiff in that suit, was he?

16 A No.

17 MR. MCGUIRE: Objection to the form of the question.

18 THE COURT: He answered that he was not.

19 Q You were the one being sued?

20 A That's right.

21 Q And on the occasions that Mr. Rubin appeared as
22 your attorney in that suit, did you ask Mr. Parness to
23 help you pay Mr. Rubin's fee?

24 A Not on that occasion.

25 Q Did you, at or about this time, have any

1 eb:mg 9

Goberman-recross

16'

2 conversation with Mr. Parness in which you said, in words
3 or substance, "I have a case in Philadelphia with Hoffman.
4 I want Rubin to represent me. I need some money to pay
5 fees to Rubin or he won't represent me. Can you help me
6 out?"

7 A I don't remember those exact words.

8 Q The substance?

9 A But the substance of the situation was as follows:

10 When I saw these three checks that were shown to
11 me today, one for \$1,000 and one for \$2500 each, I have
12 a faint recollection that Mr. Rubin had received one for
13 \$1,000 that would cover the situation that you are talking
14 about.

15 However, any money over that \$1,000, Mr. Rubin, I
16 use it as an excuse to try to get some funds from Mr.
17 Parness towards my \$20,000 that he owed me. I was supposed
18 to get whatever funds Mr. Rubin got, and I was astonished
19 that he received \$5,000 because he told me he didn't, and
20 he kept the money for his own use.

21 Q So if I understand it, the situation was this:

22 You told Mr. Parness you needed a certain amount
23 of money to pay Mr. Rubin so he could represent you in your
24 case with Hoffman?

25 A No, sir. This was for services in the past.

eb:mg 109a

Goberman-recross

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1 eb:mg 109a Goberman-recross 563a
2 Q You told Mr. Parness you owed this lawyer in
3 Pennsylvania --

4 A Mr. Rubin said I owed him money.

5 Q In the past?

6 A Yes.
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2 Q Then you told Mr. Parness you needed more than you
3 really did to pay him because you had a deal with the
4 lawyer that if Mr. Parness paid him the larger amount, you
5 would get back everything over a thousand dollars, is that
6 fair?

7 A That is right.

8 Q Do you know the legality of a lawyer --

9 THE COURT: Never mind that.

10 Q Forget that.

11 A Yes, forget it.

12 Q Now, you say that it is at this trial that Mr.
13 Rubin denied to you receipt of anything over a thousand
14 dollars, is that right?

15 A Let me say that he was going to give it to me for
16 money that he owed me. I have proof that Mr. Rubin
17 owes me quite a bit of money.

18 Q Mr. Rubin owes you money?

19 A Yes.

20 Q The lawyer?

21 A Yes.

22 Q As a matter of fact, Mr. Parness loaned you the
23 thousand dollars to pay Rubin out of his own account, didn't
24 he?

25 A Never loaned it to me. I don't know whether he

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Goberman-recross

565

2 did or not.

3 Q Did Mr. Parness make a check payable to Howard
4 Rubin for \$1,000 for services rendered in your behalf from
5 Mr. Parness' personal checking account?

6 A I don't know. The only check I saw was St.
7 Maarten Isle Hotel check.

8 MR. COHN: May I have this marked for identifi-
9 cation, please.

10 (Defendants' Exhibit O was marked for
11 identification.)

12 Q Are you familiar with Mr. Parness' signature?

13 A I may be able to recognize it; yes, sir.

14 Q Look at this check and tell us whether or not you
15 can recognize it.

16 A I would say that's Mr. Parness' signature; yes.

17 MR. COHN: I offer it, your Honor.

18 THE WITNESS: May I see the date on that, sir?

19 Q You would like to see the date?

20 A Please.

21 Q Surely (handing).

22 A Okay. Thank you.

23 MR. COHN: I offer it.

24 MR. MC GUIRE: No objection.

25 (Defendant's Exhibit O for identification was

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2 received in evidence.)

3 Q Now, did Mr. Rubin represent you while you were
4 supplying information to the government concerning Mr.
5 and Mrs. Parness in connection with the investigation that
6 led to this prosecution?

7 THE COURT: That's a long question.

8 A I don't know what you mean by represent.

9 THE COURT: It's a long question. Rephrase it.

10 Q Prior to the bringing of this prosecution did
11 you have conversations with various agents of the United
12 States Government concerning Mr. and Mrs. Parness and the
13 St. Maarten Isle Hotel?

14 A I believe I did; yes.

15 Q And was one of those persons Agent Glaze of
16 Internal Revenue?

17 A Yes.

18 Q And did Agent Glaze come to your home in Lancaster,
19 Pennsylvania?

20 A Yes.

21 Q And was he there for quite a number of hours?

22 A On some occasions; on one occasion, yes.

23 Q And was he accompanied by anyone else?

24 A Mr. Eisler.

25 Q Mr. Eisler is also an agent of the IRS who I

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2 believe -- I don't see him here at the moment -- who has
3 been in the courtroom during this trial?

4 A Yes, sir.

5 Q Now, while you were talking with Agents Glaze and
6 Eisler about St. Maarten Isle Hotel and Mr. Parness, was
7 not a tape recording of those conversations being made?

8 A Yes, sir.

9 Q And those conversations consumed some four reels,
10 is that correct?

11 A I don't know how many reels but I know in lieu of
12 a stenographer there were tapes of the conversations.

13 MR. MC GUIRE: Mr. Cohn has some tapes here
14 which the government has furnished him pursuant to statute.

15 MR. COHN: Mr. Mc Guire, could you stipulate to
16 me that the approximate running time of these tapes is
17 eight hours?

18 MR. MC GUIRE: That sounds about right. We
19 wouldn't quarrel with that.

20 Q Did you have a lawyer present during the time Agent
21 Glaze and Agent Eisler were making those tapes of conver-
22 sations with you about St. Maarten Isle Hotel, Mr. Parness
23 and related subjects?

24 A I don't believe so.

25 Q Isn't it a fact that Howard Rubin was there as your

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2 lawyer during these tapes?

3 A No, sir. If he came there he came only for a
4 few minutes because I signed a stipulation or a statement
5 stating that I don't have a lawyer and I am -- what shall
6 I say? -- I recognize the fact that I have no attorney pre-
7 sent and that I am doing this at my own free will without
8 a lawyer.

9 Q Mr. Goberman, was the attorney Howard Rubin present
10 while the agents were examining you on the subject matter
11 of Mr. Parness and the St. Maarten Isle Hotel as reflected
12 in these tapes?

13 A I don't think he was. If he was, I don't recall.
14 He might have been there for just a few moments and then he
15 left.

16 Q Do you recall him having been there for a
17 few moments and then having left?

18 A That could be possible because we were talking
19 about another subject. We were talking about my tax
20 situation.

21 Q Did you leave the room and go outside and talk
22 to him about your tax situation?

23 A No. I said it is very possible that he was in
24 the room for a short time.

25 Q You are just conjecturing?

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2 THE COURT: He is not conjecturing. You don't
3 recall?

4 THE WITNESS: If I recall, he was there before we
5 started the tapes and then he left.

6 Q Would it be fair to say that he didn't participate
7 in the interrogation of you concerning St. Maarten Isle Hotel
8 and Mr. Parness?

9 A I would be fairly certain to say that he didn't
10 take part in the interrogation.

11 MR. COHN: Your Honor, may I have these marked for
12 identification, please?

13 MR. MC GUIRE: They have already been marked, your
14 Honor.

15 MR. COHN: Do we have a number on them?

16 MR. MC GUIRE: Yes.

17 MR. COHN: And I think there are some more.

18 MR. ROSEN: There are three cassettes.

19 MR. COHN: And there are three cassettes, too,
20 your Honor.

21 MR. MC GUIRE: The four reels of tape which Mr.
22 Cohn has brought forward are marked as Government's Exhibit
23 3501 for identification collectively, and there are
24 three more cassettes of other tape recordings which have
25 been marked as Exhibit 3507 for identification.

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2 MR. COHN: Thank you.

3 Q Mr. Mc Guire asked you some questions this morning
4 on redirect examination about the day of your plea of guilty
5 to the second indictment, namely the income tax indictment on
6 December 7, 1972 in United States District Court for the
7 Eastern District of Pennsylvania. Do you recall Mr. Mc Guire
8 inquiring about that?

9 A Yes, sir.

10 Q I would now ask you, Mr. Goberman, do you know recall
11 standing next to your attorney, Mr. Elligan, when he told the
12 Court that you were actively cooperating with the government
13 in respect of certain transactions that would result in the
14 trial of other persons in another district and urged that
15 as a basis for acceptance of a plea bargaining?

16 A You asked me that question before and I believe
17 I told you that while I was standing beside him my mind was
18 a thousand miles away and I wasn't really interested in what
19 he was saying and I didn't hear him say that. I was not
20 attentive to what he was saying.

21 THE COURT: You don't dispute that he may have
22 said that?

23 THE WITNESS: If he tells me he said it I would
24 certainly believe him.

25 Q I just want to ask you if you would look at

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2 Defendants' Exhibit B for identification. Just glance
3 through that and my question to you will be, as far as you
4 recall, is that an accurate account of the brief proceedings
5 on that day?

6 A You did show me this before and I am telling you
7 the same thing I told you before I read this.

8 Q Now, having looked at that, does that appear to be
9 an accurate account?

10 A Beg pardon?

11 Q Does that appear to be an accurate account of the
12 proceedings on that date?

13 MR. MC GUIRE: I object, your Honor.

14 A Certainly this page doesn't cover it.

15 THE COURT: I think the problem, as I see it,
16 is the witness says his mind was a thousand miles away when
17 these proceedings took place.

18 THE WITNESS: Yes, sir.

19 THE COURT: So you can't say now whether you think
20 that's an accurate statement or not but you wouldn't quarrel
21 with it?

22 THE WITNESS: I don't recall it, no, sir.

23 MR. MC GUIRE: In that matter if it is helpful
24 we would be happy to stipulate that if a court reporter
25 were called he would testify that those are the notes he took.

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2 MR. COHN: I so offer it on that basis.
3 May it be received?

4 MR. MC GUIRE: I have no objection.

5 MR. COHN: I offer it.

6 THE COURT: It will be received then as
7 Exhibit B.

8 (Defendants' Exhibit B for identification was
9 received in evidence.)
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Goberman-recross

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1 Q The last topic I want to take up with you,
2
3 Mr. Goberman --

4 MR. COHN: I would ask Mr. Mc Guire if he would
5 be kind enough to give me Government's Exhibits 77, 78,
6 79, 81 and 2, that series of letters down in St. Maarten
7 the end of March, beginning of April.

8 MR. MC GUIRE: We don't have the originals in court.

9 MR. COHN: I will take copies.

10 THE COURT: Those were introduced, as I remember
11 it.

12 MR. MC GUIRE: We produced copies of all of
13 them.

14 MR. COHN: Your Honor, if the exhibits could be
15 kept in the courtroom I would appreciate it very much.

16 THE COURT: I would think so, haven't you got
17 those exhibits?

18 MR. MC GUIRE: Your Honor, in the confusion
19 coming up after lunch we neglected to bring those documents.

20 THE COURT: Do you have copies of them?

21 MR. MC GUIRE: Yes.

22 MR. COHN: May I have the copies?

23 I will be glad to work from the copies, your
24 Honor, I think I can even assume we know what they are and
25 I will be glad to go ahead.

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2 THE COURT: Why don't you try to go ahead. I think
3 these exhibits ought to be in the courtroom.

4 MR. MC GUIRE: We certainly agree, your Honor.
5 We apologize.

6 THE COURT: All right; go ahead.

7 Q Mr. Goberman, you were asked some questions by
8 Mr. Mc Guire on the stand this morning about Exhibits 77 on,
9 consisting of a series of some five or six letters, which you
10 testified I believe were prepared in St. Maarten around the
11 end of March, beginning of April. You recall that?

12 A Yes, sir.

13 Q I believe it was your testimony to Mr. Mc Guire
14 in response to questions by Mr. Mc Guire this morning that
15 these letters were prepared by Mr. Faigin?

16 A I said he prepared some of them.

17 Q Prepared some of them?

18 A Yes. Others I couldn't attest to.

19 Q Which ones did he prepare?

20 A He prepared -- in my opinion, he prepared all but
21 the last two that refer to the casino agreement and the
22 letter to the government in reference to the casino.

23 Q Mr. Goberman, when you were on this same witness
24 stand on September 13th in response to a question by Judge
25 Bonsal didn't you flatly deny that these letters were

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1 prepared by any lawyer?

2 A That is very possible. I don't remember.

3 Q It is possible? Did you tell Judge Bonsal you didn't
4 know if a lawyer had prepared these letters?

5 A I might have.

6 Q Has something happened between the time his Honor
7 questioned you on September 13th and today?

8 A Oh, yes.

9 Q Something has happened?

10 A Why, certainly it has.

11 Q First of all, on page 115 of the record, Mr.
12 Mc Guire, referring to these letters -- oh, by the way,
13 when I inquired about it you said to me you didn't even
14 know if Mr. Faigin was there at the time, didn't you?

15 A Very possible I said that. And what has happened
16 is sometimes you refresh your memory after you are out of the
17 courtroom, you have a little peace and quiet and you think
18 back in retrospect with a clear mind.

19 Q When did this clear mind retrospect take
20 place between September 13th and today resulting in this
21 change in your testimony?

22 A I can't say it is a change in my testimony.

23 Q Well --

24 A I would say it was around 3 o'clock this morning,
25

1 jhbr Goberman-recross 576
2 when I couldn't sleep, and I was thinking about what was
3 going on.

4 MR. COHN: Your Honor, I have no further questions
5 of this witness.

6 THE COURT: Any questions.

7 MR. MC GUIRE: Nothing further, your Honor.

8 THE COURT: Thank you, Mr. Goberman. You are
9 excused.

10 (Witness excused.)

11 MR. MC GUIRE: With the Court's permission, Mr. Dowd
12 will conduct the examination of the next few witnesses.

13 THE COURT: All right.

14 MR. DOWD: The government calls Mr. Richard Bird.

15 MR. COHN: May we have a brief side bar?

16 THE COURT: All right.

17 (At the side bar:)

18 MR. COHN: Your Honor, Mr. Dowd was kind enough
19 to acquaint me with the fact a while ago that this first
20 witness is being called to testify as to the value,
21 apparently, of some stock in Global Electronics.

22 I would now like to object to that testimony,
23 if that is what his testimony is to be. If he had any
24 conversations or connection with Mr. Parness, of course,
25 I don't object. But if I am correctly advised, all he is

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1 eb:mg 7

2 (In open court, jury present.)

3 J. Bonsal

4 THE CHARGE OF THE COURT

5 THE COURT: Mr. Foreman, as you are, Mr. Edelstein,
6 by virtue of occupying the first chair, and ladies and
7 gentlemen of the jury, first of all, I want to again thank
8 each of you for the care and attention you have shown in
9 this rather protracted trial and to tell you how much I
10 appreciate the sacrifices I know that each of you has had
11 to make in your own personal lives so that you could serve
12 in this very important capacity of being on a federal
13 jury.

14 I would like to join with the lawyers in thank-
15 ing you for your promptness and your attention which
16 constitutes a great tribute to the jury system.

17 I know you will bear with me and give me that
18 same degree of attention so that you may understand the
19 principles of law which govern this case.

20 You remember I told you when we started that it
21 was your duty here to weigh the evidence calmly and dis-
22 passionately, without any sympathy, without any prejudice,
23 either with respect to the government or these two defend-
24 ants.

25 And I told you that everyone appearing before

1 eb:mg 8

2 this bar of justice is entitled to a fair and impartial
3 trial.

4 And I told you that your verdict must be based
5 solely on the testimony that you heard from that witness
6 chair, and on the exhibits which were received during
7 the course of the trial, and on nothing else at all.

8 I told you also that under our system it is my
9 function to instruct you as to the law which governs the
10 case, and on this you must accept my instructions, but,
11 on the other hand, you, the jury, are the sole judges of
12 the facts in the case, and it is not what a lawyer says
13 a witness testified to, or what a lawyer may say a docu-
14 ment contained or showed, or what I might say on these
15 subjects, it is what you, the jury, remember and decide.

16 I also told you at the outset that during the
17 trial you observed me having conversations with the law-
18 yers, indeed I did, and I ruled on objections, and I told
19 you to pay no attention to this, ladies and gentlemen, be-
20 cause the lawyers, of course, have not only the right
21 but they have the duty to raise these points during the
22 trial, but there are matters of law and procedure with
23 which you need have no concern, and above all, ladies
24 and gentlemen, draw no inference from anything I may have
25 said during the course of this trial, that I may favor

1 eb:mg 9

2 one side or the other here because, of course, I do not.
3 It is for you to determine that and not me.

4 Now, throughout my charge I will instruct you
5 that you may not convict either of these defendants, Mr.
6 Parness or Mrs. Parness, unless you are satisfied that
7 the government has proven each element comprising the
8 crimes charged beyond a reasonable doubt.

9 Now what do we mean by "beyond a reasonable
10 doubt"? Well, of course the words suggest the answer.
11 It is a doubt based on reason. It is a doubt which a
12 reasonable man or woman might entertain.

13 But a reasonable doubt is not a fanciful doubt,
14 it is not an imagined doubt, it is not a doubt that a
15 juror might conjure up in order to avoid performing an
16 unpleasant task. It is a reasonable doubt. It is
17 a doubt which arises in a juror's mind because of some-
18 thing in evidence in the case or the absence of evidence
19 in the case. It is the kind of doubt which would cause
20 a reasonable man or woman in a more serious and important
21 affair in his or her own life to hesitate to act, and the
22 burden is on the government to prove the guilt of a de-
23 fendant beyond a reasonable doubt.

24 Now, the government need not prove guilt beyond
25 all possible doubt because if that were the rule, few

1 eb:mg 10

2 people, however guilty they might be, would ever be con-
3 victed.

4 In this world of ours it is practically impos-
5 sible for one to be absolutely and completely convinced
6 of any controverted fact which, by its nature, is not
7 susceptible to mathematical precision or to mathe-
8 matical certainty, and so the law is that the government
9 must prove a defendant's guilt beyond a reasonable doubt,
10 not beyond all possible doubt.

11 When I review the indictment, let me remind
12 you again as I did at the outset, that the indictment
13 is merely the charge, the way by which the government
14 brings into court individuals who it claims have violated
15 the law, and I told you that the indictment is not evi-
16 dence of the guilt of either of these defendants, nor
17 does it detract in any degree from the presumption of
18 innocence with which the law surrounds these defendants
19 until and unless their guilt is proven.

20 This presumption of innocence remains with
21 Mr. and Mrs. Parness throughout the trial, and applies to
22 your consideration of each of the essential elements of
23 the crimes charged, and this presumption of innocence
24 remains unless and until you, the jury, are satisfied
25 beyond a reasonable doubt of the guilt of a defendant as

1 eb:mg 11

2 charged.

3 Now each of these defendants, Mr. and Mrs. Parness,
4 have plead not guilty here, and by doing so they have put
5 in issue every material allegation in the indictment, and
6 as I have told you, the government must prove each and
7 every element of the crimes charged beyond a reasonable
8 doubt, and this burden has remained with the government
9 throughout, and if the government has not proved to you
10 that the defendants, either of these defendants or both,
11 are guilty beyond a reasonable doubt, then, of course,
12 it is your duty to find the defendants not guilty.

13 The testimony was marshalled for you yesterday
14 by the lawyers in considerable detail. I don't intend
15 to review all that again.

16 I thought it might help you, though, if I re-
17 viewed with you the witnesses who have testified during
18 this trial, the names of the witnesses, and indicated some
19 of the contentions, as I understand them, and I'm doing
20 this to refresh, because, as I told you, it is your
21 recollection and not mine that controls.

22 First with regard to the witnesses, you remember
23 when the trial started the first witness was Allan N.
24 Goberman, and his testimony has been discussed in very
25 great detail. I need not go into it.

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18 this trial, the names of the witnesses, and indicated some
19 of the contentions, as I understand them, and I'm doing
20 this to refresh your own recollections, because as I told
21 you, it is your recollection and not mine that controls.

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23 when the trial started the first witness was Allan N.
24 Goverman, and his testimony has been discussed in very
25 great detail. I need not go into it.

1 eb:mg 12

2 You remember he was the man who claimed that he
3 was the victim of a fraudulent scheme by the defendants.

4 The next witness was Richard L. Bird. You re-
5 member the lawyer from Salt Lake City, Utah. He told us
6 that he was lawyer and resident agent I think for this
7 Global Electronics. Remember the stock that Mr. Goberman
8 said he received in exchange for his hotel notes?

9 The next witness was Carol Goldman. You remember
10 the travel agent who worked for Travel Time. I think at
11 one time she said she was secretary-treasurer of Olympic
12 Sports Club.

13 Then came Lois Oftedal. Do you remember the
14 young lady from the National Newark and Essex Bank who
15 told us about the issuance of these cashiers checks in
16 West Orange, New Jersey.

17 Then came William Hamilton. Remember, he told
18 us he had been Goberman's lawyer during the Holzer deal.

19 Then there was William Landsman. Do you remember
20 the travel agent who said he did junkets to St. Maarten
21 and he worked with Olympic in connection with them?

22 Then there was Abbie Greenberg. Do you remember
23 Abbie Greenberg? He was a gambler, do you remember that?
24 He told us about going to St. Maarten and told us about
25 markers, and I think he said he had a little trouble paying

1 eb:mg 13

2 his at some time or other.

3 Then there was Robert Baskind. Robert Baskind
4 told us that he also arranged junkets and that he worked
5 with Parness in arranging junkets to St. Maarten.

6 Then Stanley Amsterdam. Do you remember Stanley
7 Amsterdam? Stanley Amsterdam told us, as I recall it,
8 that he had acted for Mr. Parness in connection with the
9 Goberman loan.

10 Then Aaron Wein, the accountant. Do you remember
11 he gave that expression which interested me? He said
12 he made books but what he meant was he prepared a set of
13 books for Olympic Sports Club.

14 Then there was Ida Cohen who I think has been
15 referred to as Aunt Ida, do you remember the lady from
16 Boston who came down part time to post entries in the
17 Olympic books?

18 And then we heard the deposition of Edward
19 Levrey. Do you remember the boys went down, the lawyers,
20 I should say, not the boys, the lawyers went down and took
21 the deposition of Mr. Edward Levrey in Florida because of
22 illness which didn't permit him to come to New York?

23 And finally you heard from Bernard Klinger.
24 He was the accountant, do you remember? He was the last
25 witness who told us about the preparing of some figures

1 eb:mg 14

2 for Terrasol N.V. in connection with that Canadian stock
3 offering, and he told us that there were some financial
4 statements in it which he had not signed that were in that
5 prospectus.

6 Those were the government witnesses.

7 And then the defendants called John Blandino,
8 do you remember, who testified that he had been an employee
9 at the St. Maarten Isle Hotel?

10 Then ~~Larry~~ Faigin; do you remember the lawyer
11 from the law firm downtown, Willkie Farr & Gallagher, I
12 think it was called? And how he was Holzer's lawyer and
13 later became Mr. Parness' lawyer.

14 Then there was a young man named Jeffrey Stone
15 who said he also went down to St. Maarten he testified about
16 that.

17 And finally the defense called William Glaze; do
18 you remember the Internal Revenue Agent who testified
19 briefly?

20 Ladies and gentlemen, there has been a great
21 deal of testimony during this trial about the St. Maarten
22 Hotel and casino, and the gambling that went on there.

23 As I understand it, gambling is legal in St.
24 Maarten, and I want to point out to you that this case
25 does not involve gambling, and please draw no inferences

1 eb:mg 15

2 either favorably or unfavorably with respect to that be-
3 cause the evidence indicates that the defendants were en-
4 gaged in gambling operations in St. Maarten.

5 Now, as I recall it, and again, of course, it is
6 your recollection that controls, the government is con-
7 tending that as of September, 1970, Allan Goberman owned
8 90.5% of the stock of St. Maarten Isle Hotel Corporation
9 N.V. N.V. is on all these corporations and all N.V.
10 means, as I understand it, is corporation in Dutch, so I
11 won't repeat about NV for the St. Maarten Isle Hotel
12 Corporation.

13 I believe the figure was 226,500 shares that
14 Mr. Goberman owned.

15 The hotel corporation owned and operated the
16 resort hotel and gambling casino which Mr. Goberman said
17 his construction company had helped to build. All this,
18 of course, was on St. Maarten Island in the Netherlands
19 Antilles.

20 In addition to the shares of stock which Mr.
21 Goberman owned in the hotel corporation, the evidence
22 indicated he also owned promissory notes of the hotel
23 in connection with the construction.

24 I have heard several figures mentioned but I
25 think one time 3.5 million dollars of notes was mentioned

1 eb:mg 16

2 and another time three million dollars of notes was men-
3 tioned.

4 The government contends that the defendant Milton
5 Parness was an organizer of gambling junkets to St. Maarten
6 Isle Hotel, and he operated through a corporation called
7 Olympic Sports Club, Inc., and that the defendant Barbara
8 Parness, who then was known as Barbara Landew, was a part-
9 ner in Travel Time, a travel agency that helped in making
10 the travel arrangements for gambling junkets to the St.
11 Maarten Hotel.

12 The government is contending here that during
13 the period covered by the indictment, roughly from December,
14 1970 through 1971, the defendant Milton Parness devised a
15 scheme or a plan to acquire Goberman's interest in the
16 hotel corporation, his shares of stock and his promissory
17 notes by fraud and that through a pattern of racketeering
18 activity -- and I will go into that in more detail in a
19 few minutes -- Milton Parness did acquire Goberman's
20 90.5% stock interest in the hotel and his notes through
21 having them pass from Barbara Landew -- you remember they
22 went through Barbara Landew, Stanley Amsterdam and then
23 two of these corporations, Aliter Holding and Terrasol
24 Holding.

25 Do you remember Mr. Goberman's testimony and the

1 eb:mg 17

2 testimony of the others who told us about the hotel
3 opening in January 1970, about its first year of opera-
4 tion and about the gambling junkets and how they were
5 organized, and you heard a lot of testimony about markers
6 or IOU's, do you remember, which the gamblers would give
7 when they hadn't paid for their losses.

8 And you will recall how Goberman owed \$150,000
9 from this man Holzer which he used for the hotel.

10 And there was some testimony, as I recall it,
11 of plans by which Goberman hoped that Holzer might pro-
12 vide permanent financing for the hotel.

13 Then, as I recall it, Holzer, Mr. Holzer's loan
14 became due in January of 1971, and the government con-
15 tends that the loan was paid off by Parness through
16 Barbara Landew and Stanley Amsterdam with money which
17 belonged to the hotel, and that Parness concealed this
18 fact from Goberman.

19 Then you will remember the testimony about the
20 loan in February 1971 of \$160,000 to Goberman in which
21 Barbara Landew and Stanley Amsterdam became the lenders
22 instead of Holzer, Holzer being paid off.

23 Then there was testimony about two cashiers
24 checks of the National Newark and Essex Bank for \$150,000 and
25 \$5000 dated February 4 and another cashiers check of the bank

1 eb:mg 18

2 dated February 9 for \$5,000.

3 As I recall the testimony, these checks were
4 made out to the law firm of Willkie, Farr & Gallagher,
5 Holzer's lawyers, and that the first two checks of February
6 4 were picked up at the National Newark and Essex
7 Bank in West Orange by Faigin, Hamilton and Goberman and
8 that they brought the checks back to New York.

9 Then you will recall some testimony about the
10 meetings in St. Maarten Island, and this was Mr. Goberman's
11 testimony, during the first week in April, and there was
12 testimony of the lawyers on this.

13 I think Faigin testified about it.

14 Do you remember these documents that were signed
15 at the hotel, and Mr. Goberman testified that he signed
16 these documents because he was threatened?

17 I think in one instance, in one letter he said
18 that he was told by Parness that he better sign it or
19 he might be found floating in the Caribbean, or some
20 words to that effect.

21 So what the government is contending here is
22 that Parness conceived and carried out the scheme to
23 defraud Goberman out of his interest in the hotel.

24 Then with respect to the defendant Barbara
25 Parness, the government contends that she aided and

1 eb:mg 19

2 abetted Milton Parness, and I will tell you what aiding
3 and abetting means later on, in carrying out at least
4 parts of Parness' scheme to defraud Goberman.

5 Of course the defendants deny these contentions.
6 The defendants deny that there was any scheme to defraud
7 Goberman or to engage in any of the acts of so-called
8 racketeering charged in the indictment.

9 You will recall here there was some evidence
10 that Parness had suggested to Holzer that he would ad-
11 vance \$50,000 to Holzer if he would extend the loan and
12 that Goberman thought that was very fair of him. That
13 didn't materialize.

14 The defendants contend that when the Holzer
15 loan came due, Mr. Goberman was unable to pay it and so
16 that Goberman wouldn't lose his stock, Parness borrowed
17 the money and loaned it to Mr. Goberman so he could pay
18 off the Holzer loan.

19 And that Parness, at Goberman's request, extended
20 the due date of the loan which was originally due, I think,
21 on February 8, to March 15, 1971. In other words, they
22 contend that there was no scheme here to defraud Goberman, and
23 that they were trying to help Goberman, who was in a very poor
24 financial position.

25 And later the defendants contend that when

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2 Goberman was not able to pay off the loan Barbara
3 Landew and Stanley Amsterdam, the Goberman stock which had
4 been pledged as security, was transferred to them to
5 satisfy Goberman's debt. In other words, it was a normal
6 transaction when Goberman couldn't pay the money, there-
7 fore, under the arrangement, they were entitled to take
8 over the stock which was security.

9 And finally Mr. Parness denies that he threat-
10 ened Mr. Goberman at any time.

11 And Mrs. Parness denies, of course, that she
12 participated in any way in any scheme to defraud Mr.
13 Goberman out of his interest in the hotel.

14 Now as to the statutes involved in the case,
15 ladies and gentlemen, the first one is Section 1962(b)
16 of Title 18 of the United States Code which reads in rele-
17 vant part:

18 "It shall be unlawful for any person through a
19 pattern of racketeering activity - and I will tell you
20 what that means -- to acquire or maintain, directly or
21 indirectly, any interest in or control of any enterprise
22 which is engaged in, or the activities of which affect,
23 interstate or foreign commerce."

24 Now the enterprise here, of course, is the
25 hotel. That is what the government contends here.

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2 And the government contends, and the defendants
3 deny, that Milton Parness acquired Goberman's interest
4 in the hotel, the enterprise, in violation of this statute.

5 You will recall that the statute speaks of ac-
6 quiring an interest in an enterprise through a pattern
7 of racketeering activity.

8 A pattern of racketeering activity is defined
9 to mean two or more acts which are part of a scheme or
10 plan to defraud, as in this case, and each of which, in and
11 of themselves, constitutes a federal crime.

12 And here the government contends that each of
13 these two acts violated Section 2314 of Title 18 of the
14 United States Code, which I will review with you shortly.

15 Now, you will notice, ladies and gentlemen,
16 that the statute refers to interstate and foreign com-
17 merce.

18 Now, all interstate commerce means is the movement of
19 people, money or goods from one state to another, such
20 as between New Jersey and New York. That is interstate
21 commerce. Any of us who take that PATH train, we are
22 going in interstate commerce.

23 Foreign commerce means the movement of people,
24 money or goods to or from the United States, as between
25 New York and St. Maarten. That would be foreign commerce.

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2 As I mentioned to you, the government is contending
3 here that each of these alleged acts of racketeering activity
4 violated Section 2314, Title 18, of the United States Code,
5 which provides, in relevant part, "Whoever transports in
6 interstate or foreign commerce any ... securities or money,
7 of the value of \$5,000 or more, knowing the same to have
8 been stolen, converted or taken by fraud [is guilty of a
9 crime]."

10 And the section further provides that "whoever,
11 having devised ... any scheme or artifice to defraud, or for
12 obtaining money or property by means of false or fraudulent
13 pretenses, representations, or promises, transports or causes
14 to be transported, or induces any person to travel in ...
15 interstate commerce in the execution or concealment of a
16 scheme or artifice to defraud that person of money or property
17 having a value of \$5,000 or more [is guilty of a crime]."

18 So with these statutes in mind, ladies and
19 gentlemen, I will turn to the indictment, and I remind you
20 again that the indictment is merely the charge and is **not**
21 any evidence of the guilt of the defendants.

22 The first count of this indictment is with
23 respect to Mr. Parness only. It does not charge Mrs.
24 Parness at all. The first count relates only to Mr. Parness.
25

1 eb:mg 23

2 Count 1 of the indictment reads as follows:

3 "1. At all times material to this indictment
4 and specifically during the years 1970 and 1971.

5 "A. St. Maarten Hotel Corporation N.V. (hotel
6 corporation) was a corporation established pursuant to the
7 laws of the Netherlands Antilles, was engaged in the busi-
8 ness of operating a resort hotel and gambling casino and
9 constituted an enterprise as defined by Title 18, United
10 States Code, which enterprise was engaged in and the ac-
11 tivities of which affected interstate and foreign com-
12 merce."

13 I think there is no question that the hotel
14 was an enterprise and I think that it affected foreign
15 commerce.

16 "B. From November 1967 until on or about
17 April 3, 1971, Allan Goberman was the record owner of
18 226,250 shares"-- my recollection of the evidence is that
19 it was 226,500 shares -- but that really makes no dif-
20 ference --"representing 90.5% of the outstanding stock
21 of the hotel corporation."

22 "C. Olympic Sports Club, Inc. was a New
23 Jersey corporation formed in August 1969 under the name
24 of National Vagabond, Inc. and activated in April, 1970
25 to organize gambling junkets to St. Maarten Isle casino."

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Well, there was evidence, of course, that Olympic Sports Club and Mr. Parness did organize gambling junkets to St. Maarten Isle Casino.

"D. Defendant Milton Parness was an owner of Olympic and was principally engaged in organizing gambling junkets to the St. Maarten Isle Casino."

"E. Defendant Barbara Parness, known as Barbara Landew, during the years 1970 and 1971 was an officer of Olympic and assisted Milton Parness in servicing gambling junkets to the St. Maarten Isle Casino."

"2. From on or about January 1, 1971 up to and including the date of the filing of this indictment" -- there is nothing magic about that period, the dates we heard the testimony about -- "in the Southern District of New York" -- well, the borough of Manhattan and the Bronx are in the Southern District -- "and elsewhere, defendant Milton Parness, directly and indirectly, acquired and maintained an interest in and control of hotel corporation through a pattern of racketeering activity including fraud, and the transportation of stolen money and securities in interstate commerce in violation of federal law as defined in Title 18, United States Code, Sections 1961 (1) (B) and 1961 (5) and as hereafter described."

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"3. The pattern of racketeering activity engaged in and conducted by the defendant Milton Parness included the following:

"A. Beginning on or about April 1, 1970, defendant Milton Parness organized and supervised the transportation of groups of prospective gamblers on gambling junkets from various cities in the United States, principally New York City, to St. Maarten Isle Casino. As part of this activity defendant Milton Parness collected and caused to be collected moneys belonging to the hotel corporation. These moneys included payments of IOU's commonly known as markers, representing losses that gamblers had incurred while playing on credit at the casino.

"B. Beginning on or about September 1, 1970, defendant Milton Parness, operating through Olympic Sports Club and various other junket organizers, supervised the arrangements for all junkets going to the St. Maarten Isle casino.

"The junket organizers from time to time collected moneys due the hotel corporation including markers from gamblers in the United States and remitted these moneys to the defendant Milton Parness or his representative.

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"Said money belonging to hotel corporation were at least in part deposited into Olympic's bank account at the National Newark and Essex Bank in West Orange, New Jersey.

"C. On or about October 6, 1970, Allan Goberman, who then owned a 90.5% stock interest in the hotel corporation, borrowed \$150,000 secured by a pledge of that interest in order to obtain working capital for hotel corporation. By January 25, 1971, the loan was past due and the pledge of stock was subject to forfeiture to the creditor." That would be Mr. Holzer.

"D. ~~From~~ on or about December 1, 1970 until on or about April 5, 1971, defendant Milton Parness devised and executed a scheme to defraud Allan Goberman of money and property having a value of \$5,000 or more, to wit, Goberman's 90.5% stock interest in the hotel corporation, by means of false pretenses, representations and promises.

"E. As part of the above scheme to defraud from on or about December 1, 1970 until on or about April 5, 1971, defendant Milton Parness collected and caused the collection of hundreds of thousands of dollars belonging to hotel corporation including but not limited to marker

1 eb:mg 27

2 collections and deposited some of these collections in
3 Olympic's bank account at the National Newark and Essex
4 Bank, West Orange, New Jersey.

5 "F. As a further part of the above scheme
6 to defraud, defendant Milton Parness withheld knowledge
7 of said collections from Allan Goberman.

8 "G. As a further part of the above scheme to
9 defraud, between February 1, 1971 and February 9, 1971,
10 defendant Milton Parness, using Stanley Amsterdam and de-
11 fendant Barbara Parness as his undisclosed agents, loaned
12 Allan Goberman \$160,000 from funds which, in reality, be-
13 longed to hotel corporation itself.

14 "The purpose of said loan was to allow Allan
15 Goberman to repay his \$150,000 debt, "that is, the debt
16 to Holzer, "plus accrued interest and creditor's legal
17 expenses."

18 That involves the law firm again of Willkie Farr
19 & Gallagher, their legal expenses.

20 "Defendant Milton Parness caused the loan to be
21 made to Goberman in the form of cashiers checks as de-
22 scribed below, and did not inform Goberman of the source
23 of the funds.

24 "As a condition of said loan, Goberman was re-
25 quired to transfer the pledge of 90.5% stock interest in

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the hotel corporation to defendant Barbara Parness and Stanley Amsterdam.

"H. On or about February 4, 1971, in violation of Title 18, United States Code, Section 2314" -- that is the one I read to you a minute ago -- "Milton Parness, having devised the above scheme to defraud, knowingly caused and induced Allan Goberman to travel in interstate commerce from New York, New York to West Orange, New Jersey and back, in execution of said scheme.

"I. On or about February 4, 1971, in violation of [the same statute,] defendant Milton Parness unlawfully, wilfully and knowingly transported and caused to be transported in interstate commerce from West Orange, New Jersey to New York, money and securities of a value of \$5,000 or more, to wit, two cashiers checks dated February 4, 1971, in the amounts of \$150,000 and \$5,000 respectively, drawn on the National Newark and Essex Bank, the funds for the purchase of which cashiers checks included funds that had been stolen, converted and taken by fraud from the hotel corporation as the defendant Milton Parness then and there well knew.

"J. On or about February 9, 1971, in violation of Title 18" -- the same statute I mentioned to you --

1 eb:mg 29

2 "Defendant Milton Parness unlawfully, wilfully and know-
3 ingly transported and caused to be transported in inter-
4 state commerce from West Orange, New Jersey, to New York,
5 money and securities of a value of \$5,000 or more, to wit,
6 a cashiers check dated February 9, 1971, in the amount of
7 \$5,000 drawn on the National Newark and Essex Bank, the
8 funds for the purchase of said cashiers check having been
9 stolen, converted and taken by fraud from the hotel cor-
10 poration as the defendant Milton Parness then and there
11 well knew.

12 "K. During the month of December, 1971, as
13 a further part of the above scheme to defraud, defendant
14 Milton Parness caused entries to be made in the books
15 and records of Olympic describing two checks drawn on
16 Olympic's account in the National Newark and Essex Bank
17 in the amount of \$56,000 dated February 4, 1971, and \$5,000
18 dated February 9, 1971, as representing disbursements for
19 air transportation expenses.

20 Defendant Milton Parness then and there well knew
21 that said entries describing these expenditures as air
22 transportation expenses were false and fraudulent and that
23 the two checks drawn on Olympic's account had in fact
24 been used to purchase cashiers checks at the National
25 Newark and Essex Bank, as described above.

1 eb:mg 30

2 "L. On or about March 30, 1971, in violation
3 of [the same statute,] defendant Milton Parness, having de-
4 vised the above scheme to defraud, unlawfully, wilfully
5 and knowingly caused and induced Allan Goberman to travel
6 in interstate commerce and foreign commerce from Phila-
7 delphia, Pennsylvania to St. Maarten, Netherlands Antilles,
8 in execution of said scheme.

9 "M. Between on or about April 1, 1971 and April
10 4, 1971, at St. Maarten, Netherlands Antilles, as part of
11 the above scheme to defraud, defendant Milton Parness
12 caused the transfer of Goberman's 90.5% stock interest
13 to the defendant Barbara Parness and Stanley Amsterdam,
14 the undisclosed agents of the defendant Milton Parness,
15 by causing to be drafted and signed a series of six let-
16 ters which purported to be written and signed over a period
17 of time in different places and mailed in the ordinary
18 course of business but which in fact were drafted and ex-
19 ecuted at one time and were not mailed at all.

20 "N. Between on or about April 1 and July 2,
21 1971, defendant Milton Parness did affect and attempt to
22 affect foreign commerce between the United States of
23 America and St. Maarten, Netherlands Antilles, by unlaw-
24 fully, wilfully and knowingly threatening physical violence
25 to Allan Goberman in order to secure Goberman's signature

1 eb:mg 31

2 to a letter dated as of March 17, 1969, in which Goberman
3 acknowledged that he had exchanged bearer notes of the
4 hotel corporation with a face value of three million dol-
5 lars for stock in an entity named Global Electronics, Inc.,
6 owned by The Development Company Limited, Nassau, Bahamas,
7 which stock was in fact worthless.

8 "4. Through the aforesaid pattern of racketeer-
9 ing activity, the defendant Milton Parness did directly
10 and indirectly acquire and maintain a 90.5% equity inter-
11 est in hotel corporation, and three million dollar face
12 amount of hotel corporation notes in violation of Title
13 18, United States Code, Section 1962(b) which entries
14 are subject to forfeiture subject to the rights and claims
15 of bona fide subsequent investors, if any."

16 Now, before you may find Mr. Parness guilty under
17 this count which I have just read to you, you must find
18 that the government has proved beyond a reasonable doubt
19 the following elements:

20 First, and this is the crucial one, that Mr.
21 Parness devised a scheme or plan to defraud Mr. Goberman
22 by using moneys which Olympic or Parness obtained from the
23 payment of markers, and so that they belonged to the hotel
24 corporation; that they used these moneys to acquire Mr.
25 Goberman's interest in the stock of the hotel corporation.

1 eb:mg 32

2 As I understand it, the government is contending
3 that Mr. Parness collected money due on the markers from
4 the junketeers or the gamblers but did not remit these
5 amounts to the hotel. Or, if he did remit them, Mr.
6 Goberman was denied their use.

7 The government contends that Parness used some
8 of these moneys to make the loan of \$160,000 to Goberman
9 in February, 1971, using Barbara Landew and Stanley Amster-
10 dam as his nominees.

11 Now the defendants deny these contentions and
12 they contend that the funds for the marker collections were
13 sent to the hotel and made available to Goberman insofar
14 as they had been collected.

15 Therefore this is the crucial element.

16 Do you find on the evidence here, did Mr. Parness
17 devise a scheme or plan to defraud Mr. Goberman? Well,
18 a scheme is a plan. That's all a scheme is. It is a
19 plan that he thought out this arrangement by which he was
20 going to acquire Goberman's stock using money that belonged
21 to Goberman anyway.

22 A scheme to defraud. Well, to defraud means
23 to obtain money by deceit and false pretenses, and that's
24 what the government contends here, that Goberman was never
25 told where the money came from. He was deceived in that.

1 eb:mg 33

2 Another concealment here would be that, accord-
3 ing to the government's contention, Parness concealed
4 from Goberman that ~~there~~ was money available through
5 Olympic, money available to pay off his debt to Holzer.

6 Now, if you find that Mr. Parness did devise
7 a scheme or plan to defraud Mr. Goberman, then you reach
8 the second element in the first count and that is whether
9 in carrying out the scheme, Mr. Parness engaged in a pat-
10 tern of racketeering activity, and you remember I told
11 you that a pattern of racketeering activity means that
12 Mr. Parness committed at least two crimes under the
13 statute which I read to you.

14 Now here the government contends that there
15 were three crimes which Mr. Parness committed and I told
16 you, you have got to find that the government has proved
17 at least two of them and that they were committed in
18 furtherance of Mr. Parness' scheme to defraud Goberman.

19 The first one is February 4, 1971, and here the
20 government contends that the statute I read to you was
21 violated because the two cashiers checks of \$150,000 and
22 the \$5,000 check issued by the National Newark and Essex
23 Bank in West Orange, which were brought to New York in
24 interstate commerce, brought by Goberman and Faigin and
25 the other lawyer, Hamilton, I guess, had been purchased

1 eb:mg 34

2 with money including moneys stolen, converted or taken by
3 fraud by Parness from the hotel corporation.

4 Now the second crime which the government con-
5 tends Parness committed was on February 9, 1971, and again
6 it refers to a cashiers check, and on February 9, it was
7 the \$5,000 cashiers check.

8 And here the government contends that the cash-
9 iers check totaling \$5,000 issued by the National Newark
10 and Essex Bank on February 9, 1971 and sent to Holzer's
11 lawyers in New York, which is interstate commerce, had been
12 purchased with money including money which had been stolen,
13 converted or taken by fraud by Parness from the hotel
14 corporation.

15 And the third crime which the government con-
16 tends was committed by Mr. Parness is on February 4, and
17 it is tied into the two checks on February 4, and the
18 government here contends that Parness induced Goberman to
19 go from New York to the bank in West Orange, New Jersey,
20 that is, induced him to travel in interstate commerce to
21 pick up the two cashiers checks and that this was done in
22 furtherance of Parness' scheme or plan to defraud Mr.
23 Goberman.

24 I told you that a pattern of racketeering activity
25 requires that the government prove at least two of these

1 eb:mg 35

2 alleged crimes, and that they were committed by Mr. Parness
3 in violation of Section 2314 which I read to you.

4 With respect to the first two of these crimes, which
5 are the alleged crimes regarding the cashiers checks of Feb-
6 rary 4 and February 9, the government must prove beyond
7 a reasonable doubt, first, that the cashiers checks were
8 obtained with money which had been stolen, converted or
9 taken by fraud from the hotel corporation, and this is the
10 same thing we have been over before, the government is
11 contending that the money used included money which al-
12 ready belonged to the hotel corporation and that Parness
13 concealed this from Gorman and that thereby deprived
14 the hotel corporation of the money.

15 Should you so find, that the checks were pur-
16 chased with money which really belonged to the hotel cor-
17 poration, then you may find that they were purchased with
18 money which had been stolen, converted or taken by fraud.

19 Of course, the defendant, Parness, denied these
20 contentions.

21 And the second element which the government
22 must prove beyond a reasonable doubt, if you find that
23 the checks were purchased with money which had been
24 stolen or taken by fraud, you must find that these moneys
25 which had been stolen or taken by fraud were used to

1 eb:mg 36

2 purchase the cashiers checks on February 4 and February 9,
3 and that the amounts collected were \$5,000 or more.

4 And here regarding February 4, as I recall the
5 evidence, Barbara Landew went to the bank with an airline
6 bag and some cash in it and there was testimony that the
7 cash amounted to \$99,000, and she also drew a check on
8 Olympic's bank account for \$56,000 and that these two
9 amounts, the cash and the checks, were used to buy two
10 cashiers checks of \$150,000 and \$5,000 respectively.

11 With respect to February 9, which was the last
12 cashiers check, as I recall the evidence, Barbara Landew
13 drew a check on the Olympic account for \$5,000 which was
14 used to purchase a \$5,000 cashiers check which was sent
15 to Holzer's lawyers, Willkie Farr & Gallagher in New York,
16 to pay their attorney's fees.

17 And the third element with respect to each of
18 the first two alleged crimes is that Parness transported
19 the cashiers checks in interstate commerce or caused them
20 to be transported.

21 Now, of course, there was no evidence that
22 Mr. Parness took the checks, but the government contends
23 that he caused them to be transported from West Orange,
24 and I think the evidence on that is that he telephoned
25 Goberman and said, "Go out to West Orange and get the

1 eb:mg 37

2 checks."

3 And here there is another statute, Title 18,
4 Section 2 (b) of the United States Code, which provides
5 that "whoever wilfully causes an act to be done which if
6 directly performed by him... would be an offense against
7 the United States, is punishable as a principal."

8 So under that statute Mr. Parness could be guilty
9 if you find that he did cause Goberman to pick up the
10 checks and take them back to New York.

11 With regard to February 9, I understand that the
12 government contends here, you remember the testimony of Mr.
13 Faigin about the lawyer's fees for the law firm downtown,
14 and they negotiated that, he worked with Mr. Parness on
15 that, and they agreed on a figure, and Parness, according
16 to Faigin, as I recall it, -- it is your recollection that
17 controls -- arranged to have the \$5,000 paid to the law
18 firm and Barbara Landew went out and drew a check on Olympic
19 to get the cashiers check.

20 The fourth element in connection with these al-
21 leged crimes 1 and 2, is that Mr. Parness was acting
22 knowingly, wilfully and unlawfully, that he did this
23 in pursuance of his scheme to defraud Goberman.

24 And I will discuss knowledge and intent with you
25 a little later on.

1 eb:mg 38

2 And the third alleged crime which I reviewed with
3 you, of course, which the government contends, and the
4 defendant Parness denies, is that Parness, in furtherance
5 of the scheme to defraud, induced Mr. Goberman to travel
6 from New York to West Orange, New Jersey, on February 4,
7 1971, to pick up the two cashiers checks at the bank and
8 to prove this crime, it must prove beyond a reasonable
9 doubt, first, that Mr. Parness devised a scheme to defraud
10 Goberman, and we have had all that, and second, that
11 Goberman's interest in the hotel was worth \$5,000 or more,
12 and third, that Mr. Parness induced Mr. Goberman to travel
13 on that day, and again I think I mentioned to you, as I
14 recall the evidence, he called Goberman and told him to
15 go out and pick up the checks.

16 And you remember, as I recall it, that Goberman
17 and Hamilton and Faigin got into a limousine and they
18 went out to the bank and they came back to New York.

19 And the fourth element is that Parness was acting
20 knowingly, wilfully and unlawfully, that he was acting in
21 furtherance of the scheme to defraud.

22 And I will take that up with you later.

23 Now those are the three alleged crimes which,
24 according to the government, constituted the pattern of
25 racketeering activity.

1 eb:mg 39

2 If you find that the government has proved be-
3 yond a reasonable doubt that there was a scheme to de-
4 fraud Mr. Goberman, and if you find that Mr. Parness com-
5 mitted at least two of those three crimes which I have
6 reviewed with you, and that it was done in furtherance
7 of a scheme to defraud Mr. Goberman, then you reach the
8 third element in the first count:

9 Did Parness acquire Goberman's interest in the
10 hotel corporation through this scheme to defraud and
11 through this pattern of racketeering activity?

12 In other words, through at least two of these
13 crimes.

14 And so here again, ladies and gentlemen, review
15 all of the evidence.

16 As I recall it, the shares went from Goberman
17 to Barbara Landew and Stanley Amsterdam and then there
18 was testimony that they went to Aliter Holdings N.V. and
19 then on to Terrasol N.V., both Antilles companies, and
20 there was talk about some kind of a stock offering in
21 Canada.

22 And you will recall the evidence that Mr.
23 Goberman, by a letter which the government contends was
24 backdated to 1969 -- this is Exhibit 85, I believe --
25 but signed by Goberman some time in June, 1971, which he

1 eb:mg 40

2 testified was only because of the threat made to him,
3 exchanged notes, his notes of the hotel corporation for
4 stock in Global Electronics, which the government con-
5 tends was of little or no value.

6 So determine from all the evidence whether the
7 government has proved that Parness did acquire Goberman's
8 shares and notes in the hotel through a scheme to defraud
9 and a pattern of racketeering activity as I have defined
10 it to you.

11 If you find that he did not, then, of course,
12 you cannot find that the defendant is guilty on the first
13 count.

14 If you find that he did, then you reach the fourth
15 element under the first count, and that is that the ac-
16 tivities of the hotel corporation which I referred to as
17 the enterprise affected foreign commerce. I don't think
18 there is any question about the fourth element at all.

19 You remember how the gambling junkets went from
20 the United States to St. Maarten. And that is foreign
21 commerce within the meaning of the statute.

22 The fifth element is that Mr. Parness acted
23 knowingly, wilfully and unlawfully, and that he knowingly
24 devised and carried out the scheme to defraud Goberman.
25 And I will take this up with you a little later.

1 eb:mg 41

2 So summarizing the elements of the first count,
3 ladies and gentlemen, the government must prove beyond
4 a reasonable doubt, first, that Milton Parness devised
5 a scheme or plan to defraud Goberman out of his interest
6 in the hotel corporation.

7 Two, that pursuant to his scheme he engaged in
8 a pattern of racketeering activity and committed at least
9 two of these crimes I reviewed with you.

10 Three, that through the pattern of racketeering
11 activity Parness did acquire Goberman's interest in the
12 hotel corporation.

13 Four, that the activities of the hotel corpora-
14 tion affected foreign commerce. We covered that.

15 Five, that Mr. Parness acted knowingly and wil-
16 fully and unlawfully.

17 I repeat again, if the government has not proved
18 all these elements to you beyond a reasonable doubt, you
19 must find Mr. Parness not guilty under the first count.

20 If you find that the government has proved their
21 contentions, then, of course, you may find the defendant,
22 Mr. Parness, guilty.

23 And, of course, in considering the evidence with
24 respect to the first count in this long indictment which
25 I read to you, it is not necessary for the government to

1 eb:mg 42

2 have proven every statement in the indictment, but the
3 government must have proved beyond a reasonable doubt
4 each of these five elements that I reviewed with you.

5 I think this might be a good time to take a
6 break. We finished count 1 and we just have the rest.
7 It is not going to be very long but we will cover the
8 remaining counts later and I will excuse you now for a
9 few minutes.

10 (Jury left the courtroom.)

11 THE COURT: All right, gentlemen, you can take
12 a breather.

13 (Recess.)

14 (In the robing room.)

15 MR. COHN: Your Honor, with reference to the
16 transportation counts, your Honor stated that the evidence,
17 that you recall the evidence was that Goberman telephoned,
18 that Parness telephoned Goberman and told him to go out
19 and pick up the checks period.

20 We respectfully contend that that was not the
21 evidence. There was no reference to a phone call. I
22 think what he said was he saw him up in the office earlier.
23 He said, "Get the checks."

24 Now there was considerable effort to the contrary
25 which your Honor did not mention. Specifically, Hamilton

1 eb:mg 43

2 said it was Goberman who wanted to go out to New Jersey
3 that day. Faigin confirmed that and said as far as he
4 was concerned the trip was unnecessary, the thing could
5 be done the next day in his office, and that Goberman was
6 the one who insisted on doing it and paid for the limou-
7 sine in order to do it.

8 And, of course, when Goberman gave this version
9 out in Pennsylvania, he gave the Hamilton-Faigin version,
10 not the version he gave at the trial, and if your Honor
11 is going to do the transportation count again -

12 THE COURT: You want a reference to that. All
13 right.

14 MR. COHN: I would appreciate that.

15 THE COURT: That's going to be the last count.

16 MR. MCGUIRE: I agree with Mr. Cohn there was
17 some conflict in the evidence there.

18 THE COURT: The defendant denies this. Faigin --
19 what is your point about Faigin?

20 MR. COHN: Both Faigin and Hamilton testified
21 that it was Goberman who wanted to go to New Jersey.

22 MR. DOWD: Wait a minute. Not Faigin. Hamilton
23 was in Parness' office when he and Goberman were told.

24 MR. COHN: And I asked him on cross-examination
25 who wanted to make this trip, who you said was pressing

1 eb:mg 44

2 to go and he said Goberman was pressing to go out there.

3 MR. DOWD: Pressing to go but they were di-
4 rected to go by Parness. That's what he testified to on
5 direct and that was the testimony.

6 MR. COHN: I think it was substantially contra-
7 dicted.

8 THE COURT: I will cover it. I see your point
9 on that.

10 MR. COHN: All right, your Honor.

11 And next, your Honor, in reading count 1, your
12 Honor included No. L, which of course, has been abandoned
13 by the government.

14 THE COURT: Yes, but I didn't read the statute.

15 MR. COHN: No, no. That is not the threat.

16 L is causing the, former count 7 causing the
17 transportation of Goberman to St. Maarten Isle.

18 THE COURT: I remember that, yes. Well, that was
19 stricken out. Yes. I don't think I need do anything about
20 that, do I?

21 MR. McGUIRE: Well, your Honor, the count is not
22 before the jury, and I would have no objection to your
23 Honor saying that.

24 THE COURT: Well, if I do that I get them con-
25 fused about all the other things.

1 eb:mg 45

2 MR. DOWD: Your Honor didn't cover it as an
3 element. You just read it.

4 THE COURT: No, I did not. I just read it be-
5 cause the thing was in the indictment.

6 MR. COHN: Our point is that it really isn't
7 in the indictment any more and I suppose it should have
8 been excised.

9 THE COURT: I suppose if they can find a scheme,
10 I suppose they can find they wanted him down there in St.
11 Maarten. It really ties into the scheme, doesn't it,
12 really?

13 MR. COHN: Your Honor, the final point, with
14 very great respect, there seems to be almost a pattern
15 of repetition of the government's contention and to us
16 sitting down there that seems to be --

17 THE COURT: I am trying to be absolutely fair on
18 that.

19 MR. COHN: I know you are.

20 THE COURT: And in your interest, the government,
21 you remember in their requests they wanted me to charge
22 these substantive counts first, and I didn't think that
23 would be fair to you, and inevitably on this particular
24 statute and the pattern of racketeering activity, I have
25 to do that and I couldn't see any way out of it.

1 eb:mg 46

2 MR. COHN: I think the point --

3 THE COURT: I tried to include that you denied
4 it.

5 MR. COHN: The way it seemed to come over and
6 these are all feelings, I think the evidence shows this
7 or that, there seemed to be a five or six times over of
8 the thing which--

9 THE COURT: All I can say is I'm sorry about
10 that if you think so but I think I did it fairly and
11 tried to do it fairly.

12 All right, let's go back and see if we can fin-
13 ish it up.

14 (In open court.) (Jury present.)

15 THE COURT: Ladies and gentlemen, I won't be
16 much longer. I will now review with you briefly the re-
17 maining counts which are counts 4, 5 and 6, and in these
18 counts both Mr. and Mrs. Parness are charged -- I told
19 you in the first count only Mr. Parness is charged -- and
20 in these remaining counts both Mr. and Mrs. Parness are
21 charged.

22 Counts 4 and 6 relate again to these checks we
23 have been talking about moving from New Jersey to New
24 York, and I think I'll read them together and leave count
25 5 until later on although that's a little out of order, but

1 eb:mg 47

2 I think it will be clearer to you.

3 Count 4 reads:

4 "The grand jury charges on or about February 4,
5 1971, in the Southern District of New York, Milton Parness
6 and Barbara Parness, the defendants, unlawfully, wilfully
7 and knowingly transported and caused to be transported
8 in interstate commerce from West Orange, New Jersey, to
9 New York, New York, money and securities of a value of
10 more than \$5,000, to wit, two cashiers checks dated Feb-
11 ruary 4, 1971, in the amounts of \$150,000 and \$5,000,
12 respectively, drawn on the National Newark and Essex Bank,
13 the funds for the purchase of which included at least
14 \$56,000 which had been stolen, converted and taken by
15 fraud as the defendants Milton Parness and Barbara Parness
16 then and there well knew."

17 And count 6 is exactly the same as that except
18 it relates to a cashiers check dated February 9, 1971, in
19 the amount of \$5,000 drawn on the National Newark and Essex
20 Bank, the funds for the purchase of said cashiers check
21 having been stolen, converted and taken by fraud as the
22 defendants Milton Parness and Barbara Parness then and
23 there well knew.

24 Now, with respect to these counts, and I think
25 I have reviewed all of the elements with you already so

1 eb:mg 48

2 I will do it very briefly, but you must consider these
3 charges separately with respect to Mr. and Mrs. Parness.
4 There are two defendants and you will consider the counts
5 separately as to each of them.

6 The elements with respect to these counts are,
7 first, and I have said that before, that the cashiers
8 checks were purchased with money that had been stolen, con-
9 verted or taken by fraud.

10 I went all over that with you, really, where it
11 was using the hotel corporation's money to pay off Mr.
12 Holzer and concealing that from Mr. Goberman.

13 Second, that the amount of money on each of these
14 occasions was \$5,000 or more.

15 Third, that the defendant you are considering
16 transported or caused the checks to be transported in
17 interstate commerce. I went into that with you.

18 And here with respect to Mr. Parness you will
19 consider the statute that I went over with you that one
20 who causes someone else to do it is equally guilty, and
21 the charge here is that Mr. Parness caused these things to
22 be done, but there is no evidence that Mrs. Parness trans-
23 ported these checks on February 4 and February 9, but the
24 government is contending that she aided and abetted Mr.
25 Parness in committing these crimes, the transportation

1 eb:mg 49

2 of these checks.

3 You will recall the testimony about the flight
4 bag and about the issuance of the checks, and that she
5 drew a check for \$564,000 on Olympic's account and that
6 these were used for the cashiers checks.

7 The government is contending that she did
8 these things knowing of the scheme to defraud and aiding
9 and abetting Mr. Parness.

10 And with respect to Mrs. Parness there is an-
11 other statute, Title 18, Section 2(a) of the United
12 States Code, which provides that "Whoever commits an of-
13 fense against the United States, or aids, abets, counsels,
14 commands, induces or procures its commission is punish-
15 able as a principal."

16 So here the government contends, and of course
17 Mrs. Parness denies, that Mrs. Parness was aiding and
18 abetting Mr. Parness.

19 Before you can find her guilty of aiding and
20 abetting you must find that the government has proved
21 beyond a reasonable doubt that Mrs. Parness knew of Mr.
22 Parness' scheme to defraud Mr. Goberman, that she know-
23 ingly aided and abetted in it by facilitating the trans-
24 portation of the cashiers checks on these dates.

25 Now it is quite immaterial here that there is a

1 eb:mg 50

2 relationship between Mr. and Mrs. Parness and it is not
3 enough that she may have acquiesced in what Mr. Parness
4 was doing, and it is not enough that she may have been
5 present on some of these occasions, and it is not enough
6 that she may have known that Mr. Parness, if you so
7 find, was engaged in the scheme to defraud Mr. Goberman.

8 To find Mrs. Parness guilty of aiding and abet-
9 ting you must find that she knowingly and wilfully par-
10 ticipated in the venture knowing that its purpose was
11 to defraud Mr. Goberman out of his interest in the
12 hotel, that she knew of this unlawful purpose, and that
13 in some way she sought to make the venture her own.

14 And then the fourth element on each of these two
15 counts again is that the defendant you are considering
16 was acting knowingly, wilfully and unlawfully.

17 And then the remaining count is count 5 which
18 I took out of order, which is the travel count, and
19 which reads as follows:

20 "On or about February 4, 1971, in the Southern
21 District of New York, Milton Parness and Barbara Parness,
22 the defendants, having devised a scheme to defraud and
23 for obtaining money and property by means of false pre-
24 tenses, representations and promises, unlawfully, wil-
25 fully and knowingly caused and induced Allan Goberman

1 eb:mg 51

2 to travel in interstate commerce from New York, New York
3 to West Orange, New Jersey, and back, in execution of a
4 scheme to defraud said Allan Goberman of money and proper-
5 ty having a value of \$5,000 or more, to wit, his 90.5%
6 stock interest in the hotel corporation."

7 Now, here the government is contending that
8 Mr. Parness caused all this to happen, and I reviewed that
9 with you, and I should add that the defendant not only
10 denies, both Parnesses deny that they induced Goberman
11 to go to West Orange, and, indeed, I think there was some
12 testimony by Mr. Faigin and perhaps by Mr. Hamilton about
13 the conversations when they were closing out the Holzer
14 loan, and I think Mr. Faigin said that Mr. Goberman was
15 very anxious to go out there. He wanted to go and see
16 the checks and get rid of the Holzer loan, so that is the
17 defendants' contentions, and they deny, of course, the
18 government's contentions.

19 So the elements here which are the same as we
20 have been over before, first, and you consider each of
21 the defendants separately, did the defendant you are
22 considering devise a scheme or aid and abet the other de-
23 fendant in such a scheme to defraud Goberman out of his
24 stock.

25 Second, was Mr. Goberman's interest worth \$5,000

1 or more.

2 Third, did the defendant you are considering in-
3 duce Mr. Goberman to travel in interstate commerce, that
4 is, from New York to New Jersey.

5 And I think I have covered all of the evidence
6 on that.

7 And fourth, the defendant you are considering,
8 did he act knowingly, wilfully and unlawfully?

9 Now you see from all this, ladies and gentlemen,
10 that about the defendant acting knowingly, wilfully and
11 unlawfully, this is an essential element in all of these
12 counts.

13 Did the defendant you are considering have a
14 criminal intent, did he or she have the criminal intent?

15 How do you determine that? Well, an act is
16 done knowingly and wilfully if it is done voluntarily and
17 purposefully, an act is done wilfully, knowingly and un-
18 lawfully if it is done with an evil motive or purpose such
19 as a scheme to defraud.

20 But an act is not done wilfully, knowingly or
21 unlawfully if it is done by mistake, carelessness or other
22 innocent reason.

23 Obviously we can't look into these defendants'
24 minds and know exactly what their intentions were on these
25 occasions. We can't look into their minds to see what

1 eb:mg 53

2 knowledge they had for the purpose of determining their
3 specific intentions.

4 But these are matters which you, the jury, must
5 determine from a careful consideration of the facts and
6 circumstances brought out in the evidence.

7 The knowledge and intentions of a defendant may
8 only be understood when put in the context of the cir-
9 cumstances surrounding his acts, and the inferences which
10 you, the jury, find, may be reasonably drawn therefrom.

11 You might ask yourselves whether the transac-
12 tions were normal or abnormal, whether you think they
13 were open or surreptitious, whether you think that the
14 background of the defendant made it likely or unlikely
15 that he understood what he was doing, whether you think
16 the defendant had a motive, whether he had a financial
17 or other interest in the outcome.

18 These are thd kinds of questions, ladies and
19 gentlemen, for you to consider in determining the knowl -
20 edge and intentions of the defendants.

21 Of course they are not the only ones that you
22 should ask yourselves, and I don't suggest any answers to
23 you because, after all, in your daily affairs you are
24 continually called upon to use your common sense and ex-
25 perience to determine from the actions of others what

1 eb:mg 54

2 their real intentions and purposes are, and please do the
3 same thing here with respect to each of these defendants.

4 Now, in connection with knowledge and intentions
5 of the defendants, you will recall the testimony of Edward
6 Feldman who told us that in 1970 he was handling junkets
7 to the hotel with the defendant Milton Parness.

8 As I recall it he testified he had no interest
9 in the Olympic Sports Club, and that he didn't authorize
10 Parness to use his name on checks and/or other documents
11 of Olympic, and you remember there were such checks that
12 were introduced in evidence signed with Mr. Feldman's
13 name.

14 Feldman testified that he so informed Agent
15 Glaze and that when he reported this conversation to
16 Parness, Parness said words to the general effect, "Why
17 didn't you tell Glaze that you gave me authority to use
18 your name?" Or words to that effect.

19 And then Feldman testified about an affidavit
20 that he signed in Mr. Parness' apartment. I think it was
21 Exhibit 198, at the urging of Mr. Parness, and he said
22 that this affidavit was not true.

23 The government contends that this testimony of
24 Feldman indicates a consciousness of guilt on Mr. Parness'
25 part with respect to the matters which were being investigated

1 eb:mg 55

2 by the government and which are the subject of this in-
3 dictment.

4 Now, Mr. Parness denies this. In fact, Mr.
5 Parness contends that Feldman knew that he was using his
6 name on Olympic's checks and never objected to it.

7 You remember here there was testimony about the
8 checks for telephone service, which the defendants contend
9 that these bills were paid at the urging of Mr. Feldman
10 himself and that his signature was on the checks.

11 You will consider Mr. Feldman's testimony here
12 only with respect to Mr. Parness and not with respect to
13 Mrs. Parness.

14 If you believe Mr. Feldman's testimony, and if
15 you find from it that Mr. Parness sought to have Feldman
16 give false information to the government in order to de-
17 ceive the agents or throw them off the track, then you
18 may consider Feldman's testimony as circumstantial evidence
19 from which you may infer the consciousness of guilt on the
20 part of Mr. Parness.

21 And also with respect to Mrs. Parness, you will
22 recall that the government read to you her testimony be-
23 fore the grand jury, and she, as I recall that testimony,
24 she spoke of her dealings with Mr. Levrey, said something
25 about Mr. Levrey being an active partner in the hotel and

1 eb:mq 56

2 that she was acting as Levrey's agent in making the \$150,000
3 making a loan, I have forgotten the amount, to Goberman.
4 And that Levrey had put up some of the money.

5 Now here again the government contends that her
6 testimony was false and that the testimony that you heard
7 from Levrey and others establishes that.

8 You will consider this grand jury testimony only
9 with respect to Mrs. Parness and not with respect to Mr.
10 Parness.

11 If after reviewing the evidence here you find
12 that Mrs. Parness' testimony before the grand jury was
13 false or misleading, or intended to throw the grand jury
14 off the track or to exculpate herself, then you may
15 consider her testimony as circumstantial evidence from
16 which you may infer consciousness of guilt on her part.

17 Now, in considering the evidence which you heard,
18 ladies and gentlemen, bear in mind that the law recognizes
19 two types of evidence, direct and circumstantial evidence.

20 Direct evidence is testimony of a witness who
21 personally observed the transaction or participated in
22 the activity he is describing.

23 Circumstantial evidence consists of circumstances
24 established from which the jury may infer by a process of
25 reasoning certain facts which are sought to be established

1 eb:mg 57

2 as true.

3 The classic example of circumstantial evidence
4 is if you go home one day and you have got a wet hat and
5 a wet raincoat and somebody in your apartment looking at
6 TV sees you and they say, "Gee, it is raining outside."
7 They haven't looked outside. They look at you and see
8 your wet coat and by a process of reasoning they infer
9 it is raining outside. That is circumstantial evidence.

10 Of course, there is an awful lot of circumstan-
11 tial evidence in this case about all these things that
12 happened in St. Maarten, in New York.

13 Both direct and circumstantial evidence are good
14 evidence, and no greater degree of certainty is required
15 when it is circumstantial than when it is direct. But
16 in either case you, the jury, must be convinced of the
17 guilt of the defendant you are considering beyond a
18 reasonable doubt.

19 Of course different inferences may be drawn from
20 the evidence whether it is direct or circumstantial.

21 The government may ask you to draw one set and
22 the defendants ask you to draw another, but it is for you,
23 the jury, to decide what inferences you will draw from
24 the evidence.

25 But remember that the inferences you draw must

1 eb:mg 58

2 be reasonable inferences based on the evidence or lack
3 of evidence, and do not speculate.

4 And again, of course, the government's burden
5 is to prove guilt beyond a reasonable doubt.

6 I would like to say a few words about credibility.
7 You ladies and gentlemen are the exclusive judges of the
8 credibility of the witnesses. Of course, that was re-
9 viewed in some detail by the lawyers yesterday in their
10 summations, particularly as related to Mr. Goberman, as
11 I recall it, but it is up to you. You are the exclusive
12 judges of that, and with respect to the deposition of
13 Mr. Levrey, I told you you apply the same standards to
14 Mr. Levrey as you do to live witnesses with the exception
15 that you didn't see him. In all other respects you
16 apply the same standards.

17 Now, you gave careful attention to the testimony
18 of the witnesses, you had an opportunity to observe them,
19 you heard their testimony discussed by the lawyers, and you
20 will subject the testimony of all witnesses to the same
21 standards, whether they were called by the government or
22 by the defendant, and it isn't the number of witnesses,
23 it is the quality, not the quantity, of the testimony,
24 the testimony you think represented the true picture of
25 what happened here.

1 eb:mg 59

2 In considering the credibility of these witnesses,
3 ladies and gentlemen, you will consider the support or
4 lack of support that the witnesses' testimony receives
5 from other evidence or circumstances brought out at the
6 trial, and please use your everyday common sense.

7 You observed them giving testimony. How did they
8 impress you? Did you think the witness was testifying
9 frankly, candidly, and fairly?

10 So apply your common sense and experience just
11 as you do when you are called upon to determine the im-
12 portant matters in your own lives, when you have to de-
13 cide whether you have been given a true picture of a given
14 situation.

15 I think you will consider a witness' demeanor, you
16 take into account his age, his background, his occupation
17 or business, his prior criminal record, if any; you con-
18 sider his candor or lack of it, the witness' possible
19 bias, his means of information and the accuracy of his
20 recollection, and you will consider whether you find a
21 witness' testimony is supported or whether you find it to
22 be contradicted by other credible testimony or circum-
23 stances.

24 A witness may be discredited or impeached by
25 contradictory evidence or by evidence that at other times

1 eb:mq 60

2 the witness had made statements which are inconsistent
3 with his present testimony.

4 If you believe that any witness has been im-
5 peached or discredited, if you believe that a witness is
6 lying to you, it is your exclusive province to give the
7 testimony of that witness such credibility, if any, as you
8 think it deserves. You can reject all the testimony of
9 a witness if you don't believe him, or you can accept
10 parts of his testimony if you do believe him and reject
11 the rest.

12 Neither Mr. nor Mrs. Parness testified before you
13 at this trial. I instruct you that the fact that they
14 didn't see fit to testify must not be considered by you as
15 any evidence against either of them or as the basis for
16 any presumption favorable or unfavorable to either of them;
17 please don't let this weigh in your consideration in the
18 slightest degree because as I have told you ladies and
19 gentlemen, the government has the burden of proving a
20 defendant's guilt beyond a reasonable doubt.

21 A defendant is not required to prove his in-
22 nocence.

23 Now bear in mind, ladies and gentlemen, that
24 there are two defendants here and the guilt or innocence
25 of each of them must be passed on by you separately. Each

1 eb:mg 61

2 of these defendants has the right to the same consider-
3 ation on your part as if he or she were being tried alone.

4 Of course, a separate crime is charged in each
5 of the counts of the indictment; counts 1, 4, 5 and 6.
6 There are four counts. Each charges a separate crime.
7 And the evidence applicable to each must be considered
8 by you separately as to each of the defendants charged.

9 Remember Mr. Parness alone in count 1, both de-
10 fendants in the other counts.

11 The fact that you may find a defendant guilty
12 or not guilty on one of the counts does not control your
13 verdict with respect to any of the others.

14 You will have the right to see the exhibits that
15 have been introduced in evidence and you may have portions
16 of the testimony reread should you so desire. Just let me
17 know by telling the marshals.

18 As you deliberate, ladies and gentlemen, please
19 be careful to listen to the opinions of your fellow jurors
20 as well as to seek an opportunity to express your own
21 views.

22 A jury deliberation is one in which everybody
23 expresses their views and exchanges views.

24 Don't be afraid to change your view because of
25 pride of opinion or stubbornness or any other reason at all

1 eb:mq 62

2 should you become convinced that your original view was
3 wrong.

4 On the other hand, ladies and gentlemen, never
5 surrender your honest conviction. Never do that for any
6 reason, whether you are outvoted or any other reason at
7 all. Never surrender your conscientious conviction.

8 You will seek to arrive at a verdict here con-
9 sistent with the conscientious conviction of all of you.

10 Of course, it is extremely important from both
11 the point of view of the government and from both of these
12 defendants in this case that it be decided by you, and this
13 being a criminal case, ladies and gentlemen, your verdict
14 must be a unanimous verdict, a verdict joined in by each
15 of you representing your conscientious convictions.

16 If after you have reviewed the evidence you find
17 that a defendant is not guilty, you must not hesitate for
18 any reason to render a verdict of not guilty. On the
19 other hand, if you find that the law was violated by the
20 defendants, you must not hesitate to render a verdict of
21 guilty because of sympathy or any other reason at all.

22 Of course, please don't consider the question
23 of possible punishment of the defendants in case you find
24 them guilty. Please don't let that enter into your de-
25 liberations in any way. That duty rests on the Court.

1 eb:mq 63

2 And please don't let the consideration of punish-
3 ment affect you or make you seek the avoidance of an un-
4 pleasant task.

5 Finally, ladies and gentlemen, I'm sure that if
6 you listen to the views of your fellow jurors and you ex-
7 press your own views, if you apply your common sense, you
8 will reach a fair verdict, and remember that your verdict
9 must be rendered without fear, without favor, without
10 prejudice and without sympathy.

11 As I mentioned to you, I will send a copy of
12 the indictment in to you, Mr. Foreman, in the jury room,
13 and your verdict on each of these counts, counts 1, 4.5
14 and 6, will be either guilty or not guilty.

15 All right, gentlemen, would you come forward a
16 minute, please.

17 (At the side bar.)

18 MR. COHN: Your Honor, first of all, with respect
19 to credibility, I respectfully except to your Honor's
20 charge and say that it was completely inadequate and rep-
21 resented a denial of virtually all of our requests which
22 were based on authority in this circuit.

23 THE COURT: All right, you have an exception on
24 that.

25 MR. MCGUIRE: Can I say something when he is

1 eb:mq 64

2 finished?

3 THE COURT: Yes.

4 MR. COHN: Specifically, your Honor, the just
5 almost slurring over three words about prior criminal
6 record is not the charge we are entitled to insofar as
7 the outlook affects the credibility of a witness.

8 Next there was absolutely no mention of motive
9 in this case. Of course, we have strenuously asserted the
10 motive of Mr. Goberman insofar as the plea bargain which
11 he made with the government and advised the Court that he
12 was cooperating with the government in this case.

13 We again feel the charge failed to crystallize
14 what we had been led to believe your Honor was going to
15 do; namely, the sharp issue of the credibility of the
16 testimony of the complainant in this case, Mr. Goberman.

17 THE COURT: I think I did that.

18 MR. COHN: No, your Honor.

19 MR. McGUIRE: You will be surprised. I am going
20 to support you.

21 MR. COHN: Secondly, your Honor, I except to
22 your Honor's failure to charge that if they find consistency
23 with both guilt or innocence -

24 THE COURT: I used to do that but the Court of
25 Appeals doesn't like that.

1 eb:mg 65

2 MR. COHN: They don't like that?

3 THE COURT: No.

4 MR. COHN: With reference to your Honor's outline
5 of the evidence concerning Feldman, your Honor omitted to
6 tell the jury Feldman had testified that he and Parness
7 had been partners at the beginning.

8 THE COURT: That is something for their recollec-
9 tion.

10 MR. COHN: Next, I want to preserve the point
11 on the fact that the dispute in law as to whether under
12 the circumstances of count 1 Parness could in fact aid
13 and abet Goberman who would have to first be found to be
14 at least a principal under the circumstances.

15 And finally, I don't know what your Honor can do
16 about this, this mention of the word "racketeering," I
17 realize it is in the statute but it seems to convey some-
18 thing to a layman's mind which --

19 THE COURT: I tried to be very careful about what
20 racketeering activity means, which is two crimes under that
21 statute, but I can't do anything else to avoid the wording
22 of the statute.

23 All right, you have those exceptions.

24 MR. MCGUIRE: Your Honor, my point is that so far
25 as every one of those exceptions except one is concerned,

1 eb:mg 66

2 I think Mr. Cohn is incorrect. However, I do believe that
3 he is entitled as a matter of law to a charge on the credi-
4 bility of witnesses of the sort to which he says he is
5 entitled, that is, essentially that the testimony of a
6 witness with a criminal record must be considered with care
7 and caution, and the nature of his crimes must be evaluated.

8 I think the language in Mr. Cohn's request to
9 charge on that point is language that has been specifically
10 approved and in fact recommended by the Court of Appeals
11 and I think it would be reversible error for your Honor
12 not to charge it.

13 THE COURT: All right. Let's get the requests
14 to charge and let's take a look at it.

15 Have you anything else?

16 MR. McGUIRE: No, sir.

17 THE COURT: Mr. Cohn, which part of this do
18 you want me to put in?

19 MR. McGUIRE: Your Honor, I don't subscribe to
20 all of the exact language that Mr. Cohn has marked off
21 but the general substance of it Mr. Cohn is entitled to.

22 THE COURT: All right.

23 I will give them an extra charge on that.

24 Thank you, gentlemen.

25 (In open court.)

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2 THE COURT: The lawyers have asked me to give
3 you a little supplemental charge in connection with the
4 credibility of the witnesses which I reviewed with you a
5 few minutes ago.

6 And that is that you should consider where a
7 witness has been convicted of a crime and particularly the
8 nature of that crime which might affect his credibility.
9 And you recall in this case they were talking about Mr.
10 Goberman - Mr. Goberman was convicted of perjury, and
11 therefore you should consider his testimony with caution
12 and with great care.

13 And then that on another occasion Mr. Goberman
14 was convicted of making a false financial statement.
15 Do you remember that was also brought out? And also in
16 connection with the wilful filing of false tax returns.

17 And, therefore, ladies and gentlemen, I will
18 ask you in considering Mr. Goberman's testimony to have
19 these things in mind and consider his testimony with great
20 care.

21 Of course, in connection with Mr. Goberman's and
22 all other witnesses, I think I told you you are to consider
23 whether you find their testimony supported or whether you
24 find it to be contradicted by prior statements they may
25 have made, and particularly with regard to Mr. Goberman

1 eb:mg 68

2 in connection with the depositions that were made in
3 Pennsylvania.

4 All right, ladies and gentlemen.

5 Would you swear the marshals, please.

6 (Three marshals sworn.)

7 THE COURT: All right, now will the four alternates
8 kindly remain in their seats and I am going to excuse the
9 twelve who are on the regular jury who will go to the
10 jury room in the company of the marshals and commence
11 their deliberations.

12 I would like the alternates to stay a few min-
13 utes because I would like to have a little talk with them.

14 The first twelve of you now may retire to com-
15 mence deliberations in the company of the marshals.

16 (At 10:55 o'clock a.m. the jury retired to
17 commence deliberations.)

18 THE COURT: Ladies and gentlemen, this has been
19 a fairly long trial here, and you have been very good and
20 attentative as jurors and you have listend to all of the
21 testimony.

22 One of the problems that comes up sometimes is,
23 in a case like this, that one or more of the regular
24 jurors may have something happen.

25 I remember a case where a juror's mother had a

★ ★ ★

APPELLANTS' NOVEMBER 9, 1973 POST-TRIAL MOTIONS

652a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

MILTON PARNESS and
BARBARA PARNESS,

Defendants.

NOTICE OF MOTION

73 Cr. 750

S I R :

PLEASE TAKE NOTICE that, upon the annexed affidavit of ROY M. COHN, sworn to November 9, 1973, the defendants, Milton Parness and Barbara Parness, will move this Court on November 21, 1973, in Room 1506 of the United States Courthouse, at 9:30 A. M., or as soon thereafter as counsel can be heard, for the following relief:

I. For an order pursuant to Rule 33 F.R.Cr.P. granting the defendants a new trial based on newly discovered evidence which establishes the fraud perpetrated on the Court and jury by Allan N. Goberman, or, in the alternative, for a hearing to determine whether the Government suppressed evidence favorable to the defendants, and did not fulfill the requirements imposed upon it under Brady v. Maryland.

II. For an order pursuant to Rule 33 F.R.Cr.P. granting the defendants a new trial in the interest of justice on the grounds, among others, that the shift in theory by the prosecution from the indictment and bill of particulars to the totally different theory urged for the first time during the prosecutor's unanswerable summation, was fatally prejudicial.

III. For an order pursuant to Rule 29(c) F.R.Cr.P. setting aside the verdicts and granting to the defendants judgments of acquittal on the ground that the evidence was insufficient to sustain the jury's verdicts against the defendants.

Appellants' November 9, 1973 Post-Trial Motions

653a

IV. For an order pursuant to Rule 34, F.R.Cr.P.
arresting judgment on the following grounds:

A. The Court was without jurisdiction
of Count One in that Title 18 U.S.C. Sections 1961,
et seq., are unconstitutional.

B. Count One does not charge an offense.

C. The jury's verdicts are a nullity.

V. For such other and further relief as to this
Court may seem just and proper.

Dated: New York, New York
November 9, 1973

Yours, etc.,

ROY M. COHN
Attorney for Defendants
39 East 68th Street
New York, New York 10021

(212) 472-1400

TO:

United States Attorney

UNITED STATES DISTRICT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

AFFIDAVIT

v.

73 Cr. 750

MILTON PARNESS and
BARBARA PARNESS,

Defendants.

-----x

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

ROY M. COHN, being duly sworn, deposes and says:

I am the attorney for the defendants and submit this affidavit in support of the defendants' various post-trial motions.

I. MOTION FOR NEW TRIAL BASED ON
NEWLY DISCOVERED EVIDENCE, OR,
IN THE ALTERNATIVE, FOR A HEAR-
ING TO DETERMINE WHETHER THE
GOVERNMENT SUPPRESSED EVIDENCE
FAVORABLE AND EXCULPATORY TO
THE DEFENDANTS

The defense proceeded on the basis that the central charge running throughout the indictment was that Milton Parness collected at least \$160,000 in casino winnings, stole that sum from its rightful owner* and loaned those monies to Goberman in February 1971 to prevent the Holzer foreclosure. It was the defense's understanding that this was the scheme alleged in the indictment by which Milton Parness acquired Goberman's stock.

As set forth, infra, the defense claims that the central charge was changed by the prosecutor, in summation, when he conceded for the first time that Milton Parness and/or Olympic did re-
mit the marker collections to the hotel, but argued, however, that

*The Government never clarified whether the funds belonged to the corporation or to Goberman.

Affidavit of Roy M. Cohn Annexed to Foregoing Post-Trial Motions 695a
Allan Goberman -- who was allegedly owed \$150,000 by the corporation because he supposedly advanced the Holzer monies to the hotel -- was deprived of his control over the corporation's assets including monies in its checking account.

By virtue of the shift in position, two elements now become crucial, i.e.,

1. Did Goberman advance the \$150,000 to the hotel?
2. Was Goberman deprived by Milton Parness or anyone else of control of the corporation's assets and funds in its checking account?

While these two elements were brought up during the trial, they were peripheral to the central issue of whether Milton Parness stole \$160,000 of marker collections.

In view of the importance of the two elements to the Government's "new" theory, which we had no way of anticipating until the summation and its change in theory, subsequent to the trial we have obtained records from the Bank of Nova Scotia in St. Maarten as well as other sources on the Island which establish:

1. That Goberman did not advance \$150,000 to the corporation (he has conceded that \$15,000 of the \$150,000 may have been pocketed for his own benefit) and new evidence demonstrates that this concession was a gross and material understatement.
2. That at least part of Government's Exhibit 23 (the \$40,000 "check") is a fraud;
3. That Goberman did not, during the period which he testified to, lose control of the assets and funds of the corporation;
4. That the Government, upon information and belief, suppressed exculpatory evidence in

5. That the Government knowingly misrepresented to the jury that Goberman had no power to sign checks on the hotel bank account in January, February, March and April 1971.

The prosecution's opening statement clearly reflects the uncertainty as to what Goberman did with the \$150,000 Holzer loaned him:

"The \$150,000 loan was acknowledged by everybody to be for the purpose basically of paying the hotel's current bills, and the proof will show that although the loan was made personally from Holzer to Goberman, it was used -- it was contributed, if you will, or loaned by Goberman to the corporation which owned the hotel, in order to pay the bills." (MP 8)*

Goberman testified, on direct:

"Q. What did you do with the \$150,000 when you received it?

A. It went into the general operation, I believe, of the hotel at that time."
(48)*

Goberman also testified that the \$150,000 check (Exh. 19) was deposited to his personal account and that "subsequently the money was withdrawn from that account and I loaned it to the Hotel Corporation." (48)

Goberman then identified Exhibit 23, which he said shows the transfer of money from his personal account to the Hotel Corporation's account (49). Exhibit 22 is a copy of Goberman's personal account bank statement at the Bank of Nova Scotia for October 1970 only.

*Numbers preceded by "MP" refer to pages of the prosecutor's opening statements. All other references are to the trial transcript.

Affidavit of Roy M. Cohn Annexed to Foregoing Post-Trial Motions 657a

Attached hereto as Exhibit "A" are photocopies of the

St. Maarten Isle Hotel checking account statements for October through December 1970, which we recently obtained from the Bank of Nova Scotia in St. Maarten.

Exhibit 22 shows that on October 12, 1970, \$150,000 was credited to Goberman's personal account. The exhibit also shows that a \$50,000 check was paid on October 16. This apparently refers to the October 15, \$50,000 check (#A5778) reflected in Exhibit 23. The hotel account (Exh. "A") reflects that \$50,000 was deposited on October 16*. We have circled same in red ink.

We have also been able to recently obtain Goberman's personal account bank statements for November and December 1970 and January 1971. We attach same hereto as Exhibit "B". These documents follow in sequence Exhibit 22 which is the October 1970 statement put in evidence by the Government.

Exhibit "B" reflects a deposit of \$25,000 in Goberman's personal account on November 2. It further reflects a paid \$40,000 check on November 18, a debit memorandum for \$25,000 on December 1 and a debit memorandum for \$20,000 on December 30. The aforesaid \$40,000 check and two debit memoranda are supposedly reflected on Exhibit 23. The hotel bank account (Exhibit "A") reflects the deposit of the two debit memoranda. We have similarly circled same in red ink.

But the \$40,000 check -- #A5544, made payable to the hotel -- appearing on Exhibit 23, nowhere appears as a deposit in the hotel's account (Exh. "A").

*It should be noted that out of the \$150,000, Exhibit 22 reflects a \$2,000 check and a \$25,000 check paid on October 16 and 20, respectively. However, no such sums appear as deposits in the hotel account for October.

We submit that the \$40,000 check reflected on Exhibit

23 is a fraud.

We submit further that out of \$150,000 obtained by Goberman from Holzer, the hotel bank account reflects deposits of only \$95,000. The Government's representations to the jury as to Goberman's use of the \$150,000 are now exposed as false. The alleged debt owed to Goberman relative to the \$150,000 is now exposed as false. The fabric of the Government's case is now exposed as false.

It is of paramount significance, now, for this Court and defense counsel to ascertain, at least by a hearing, whether the Government had in its possession, prior to or during trial, Goberman's bank statements for November 1970 through January 1971 (Exhibit "A" hereto) and/or the hotel's statements for October through December 1970 (Exhibit "B" hereto). Should the answer to this inquiry be in the affirmative, it is clear that the prosecutor's failure to disclose and disgorge same to the defense is a patent violation of Brady v. Maryland.

The fact that \$150,000, or even \$135,000, was not reflected on the hotel's bank statement could have made the difference in the verdict. The fact that the \$40,000 check is not reflected therein could have had the same effect.

My office has been advised by officials of the Bank of Nova Scotia in St. Maarten that representatives of the Government did in fact examine and make copies of the hotel's bank records.

The second critical element that emerges as an issue because of the change in theory is the matter of Goberman's alleged lack of control over the corporation's assets and funds.

Initially, it must be noted that before and during the trial the prosecutor had in his possession at least three checks (Exhibits "C", "D" and "E" annexed hereto), which establish without any doubt that Goberman had and knew he had control over the hotel funds.

It is beyond belief that, armed with at least those three checks, the prosecutor could tell the jury:

"But the evidence showed that even though hundreds of thousands of dollars were collected by Parness and sent down to the hotel in the months of January, February, March and April 1971, Goberman wasn't able to get access to a nickel of it, and he testified . . . that when he arrived at the hotel during that period of time he found out that he couldn't even sign a check on the hotel's bank account. (1649)

* * *

". . . and the books are in evidence that show that marker collections from that time [February 1971] forward went down to St. Maarten Island in very large amounts, hundreds of thousands of dollars, which Goberman should have had available to him to pay off the loan which was now in form owed to Barbara Landew and Stanley Amsterdam, and it was part of the scheme to defraud Goberman* that he wasn't allowed to have access to those funds in order to pay off that loan". (1670-1671).

The three checks -- anticipated by the Government to be possible exhibits -- signed by Goberman, made payable to Goberman, each in the sum of \$1,000, are dated in March, April and May 1971.

But equally revealing is the fact that Goberman was still an authorized signatory on the hotel accounts until he ceased being managing director in July 1971. We have recently

*Apparently the prosecutor thought this was charged in the indictment -- but it is not!

obtained a copy of the hotel bank account signature card at the Bank of Nova Scotia which bears the names John Blandino, Edward Levrey and Allan Goberman (Exhibit "F" annexed hereto). The card reveals the two account numbers and the fact that the names appeared thereon without deletion until the account was closed. I am advised that said card is the only card the bank maintained for the hotel.

If the Government possessed the signature card or knew of its existence or contents and failed to disclose or disgorge it, Brady has again been subverted.

It is also significant to note that under Netherlands-Antillian law a managing director, as long as he occupies such position, has control over the assets and funds. Goberman was managing director until July 2, 1971.

But there is yet to come the most astonishing evidence of the fraud perpetrated on this Court and jury. On April 5, 1971, Allan Goberman, as managing director of the St. Maarten Isle Hotel Corporation, N.V., gave a third mortgage to the Windward Island Bank of St. Maarten in excess of \$250,000, binding the Hotel Corporation to cover notes issued May 15, 1970, and August 28, 1970. We have been advised that these notes were issued by Goberman to cover a huge overdraft of one of his wholly owned corporations in St. Maarten. For a man who allegedly has lost control of his corporation, it certainly appears that in fact he dominated it.

We have recently obtained from St. Maarten a certified copy of the mortgage deed recorded on the Island (Exhibit "G" annexed hereto). In addition, we obtained a copy of a letter dated April 3, 1971, addressed to Mr. van de Voort, counsel for Windward Bank, confirming the agreement to give a third mortgage.

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Affidavit of Roy M. Cohn Annexed to Foregoing Post-Trial Motions 661a

It is to be noted that the letter is signed by Allan Goberman as managing director of the St. Maarten Isle Hotel Corporation. A copy of said letter is annexed hereto as Exhibit "H".

The Netherlands-Antillian Government takes precautions to insure that one representing himself as a managing director is legally in fact the holder of such position. Exhibit "I" annexed hereto, which we have recently obtained from the Island, is a certification, made in connection with the third mortgage, to the effect that Allan Goberman, as of April 5, 1971, was the managing director of St. Maarten Isle Hotel Corporation, N.V.

Again, if the Government was in possession of any of the documents referred to above and did not disclose or disgorge them, Brady has been violated and, of course, so have the rights of Milton and Barbara Parness.

We respectfully submit, in light of the above, that the Court vacate the convictions entered herein and direct a new trial or, in the alternative, direct that a hearing be held to determine which, if any, of the above-referred-to documents have been or are in the possession of the Government.

II. MOTION PURSUANT TO RULE 33 F.R.Cr.P.
FOR A NEW TRIAL IN THE INTERESTS OF
JUSTICE

The specifications of error set forth below not only cumulatively, but singly, warrant a new trial. The prosecution's quest for a conviction no doubt propelled it into a course of conduct designed to prejudice the defense.

The prejudice is overwhelming. The tactics of the prosecutor were deliberate and knowing. The defendants were deprived of a fair trial and the record clearly bears this out.

A. The Prosecution's Change in
Theory, Articulated For the
First Time in Summation, Fatally
Prejudiced the Defendants

The indictment sets forth events as allegedly constituting a plan to acquire Goberman's shares in Hotel Corp.

Briefly, Count One of the indictment charges that Milton Parness:

1. stole, converted and took by fraud monies lost by gamblers at the casino, which monies belonged to Hotel Corp.;
2. withheld knowledge from Goberman of his collections;
3. deposited "some" of the collections in Olympic's bank account, and
4. loaned Goberman \$160,000 "from funds which in reality belonged to Hotel Corp. itself."

The Government's Bill of Particulars under the original and superceding indictments states, among other things, as follows:

1. The government does not know the total dollar amount of markers collected by Milton Parness, but Milton Parness had in fact collected and caused the collection of hundreds of thousands of dollars on markers due and owing to Hotel Corp.
2. Milton Parness had in fact been able to effect sufficient marker collections so that Hotel Corp. had the cash to repay Holzer's loan.
3. In fact, at least \$56,000 of Hotel Corp's. funds were on deposit in Olympic's bank account.

4. The negotiation, on February 4, 1971, of a check for \$56,000 constituted a conversion and theft of \$56,000 from Hotel Corp. by the defendants,

5. The negotiation, on February 9, 1971, of a check for \$5,000 constituted a conversion and theft of \$5,000 from Hotel Corp. by the defendants,

6. The source of the \$160,000 was marker collections.

7. The entire \$160,000 loaned to Goberman was Hotel Corp. money.

Thus, it is critical to note that at the conclusion of the pretrial stage, it was the prosecution's theory that Milton Parness, having devised a scheme to defraud Goberman (the indictment states the scheme was born in December 1970), collected, withheld and stole from Hotel Corp. \$160,000 of marker monies, all of which he later loaned to Goberman to pay off Holzer. Every count in the indictment rests on the charge that these were stolen funds.

Certainly, it was not the prosecution's theory that Parness had collected the marker monies and remitted them to the corporation, but that Goberman did not have control over those funds.

The prosecutor, in his opening statement to the jury, stated that Milton Parness was in charge of collecting marker monies from players who had lost at the casino. Further, it was stated that what did in fact happen was that when Goberman went to Milton Parness and asked him to turn over collections that Parness had made and was supposed to make on markers, Parness, over a period of time, told him how difficult it was to collect from the

Affidavit of Roy M. Cohn Annexed to Foregoing Post-Trial Motions 664a
gamblers (MP 8). The prosecutor went on further to represent

that ultimately, when Holzer called the loan (November 20, 1970), "the marker collections were not available to pay Goberman back his advances" (MP 8). The record reveals further that the prosecutor stated that when the \$160,000. was later loaned to Goberman to pay off Holzer, in effect, Milton Parness "arranged to lend Goberman his own money" (MP10).

There can be no question that from the indictment, bills of particulars and opening statement, the key allegation was that Milton Parness collected, and appropriated unto himself, the marker monies, which he then used to purchase the \$160,000. in cashier's checks of February 4 and February 9. It was as to this central theory that the defense was addressed throughout the trial. For example, the defense sought to establish that there was no proof as to how much marker monies was owed or collected by Parness; that the monies collected by Parness were in fact transmitted to St. Maarten, and that monies which Goberman attempted to infer were in fact collected were not so collected. (This consisted of original markers identified by Mr. Blandino but which the Court excluded from evidence.)

It is crystal clear that at no time, until the Government's summation, was there any suggestion that the scheme allegedly concocted by Parness was to collect the monies, transmit them to the hotel and, by removing Goberman from the bank account, to deprive him of the opportunity to repay the loan.

For if the "new prosecution theory" had been articulated to the defense prior to the government's summation, the defense would have sought to meet it.

What is even more critical for the Court's consideration

is the fact that the Government's new theory was based upon testimony in the record which the Court specifically ruled was not admissible for its truth. When Goberman testified that he was taken off a bank account, he was asked by the prosecutor how he discovered that situation. Goberman testified that a Mr. McDonald from the Bank of Nova Scotia told him that he lost control of the bank accounts (102-103). Defense counsel objected "to what he was told by Mr. McDonald" (103). The Court allowed the testimony concerning Goberman's rights in the bank, but "not for the truth of the statement."

Thus, we submit that the Government's changing theory, based on information in the possession of the Government which it knew was false * and based on testimony not admitted for the truth was the result of panic and the realization that the defense had established that Milton Parness stole no monies from Hotel Corp.

It must be recalled that in defense counsel's summation he challenged the jury to take Olympic's cash receipts and cash disbursements book into the jury room during deliberations and to total up the amounts received by Olympic from marker collections and the amounts disbursed by Olympic to the Hotel (1628). Those records, Government's Exhibit 155 clearly show that not a cent was stolen or withheld on marker collections. The Government's realization of this situation prompted its switch in theory.

Pertinent excerpts from the prosecutor's summation revealing the changing theory are set forth below:

"and if Parness took the money that he collected from gamblers...and put it to any other purpose than paying the hotel, if in fact he put it to the purpose of purporting to loan Goberman money, then you may find that that was an act of fraud"
(1647-1648)

*supra, page 6.

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"after paying off Holzer, Parness prevented Goberman for the next few months from getting access to any more of his own hotel's receipts. . . ." (1648)

"Even after February 1971 Parness continued to collect gambling debts for the hotel and evidence is as clear as it can be that he continued to send money down to the hotel in the amounts of hundreds of thousands of dollars and that money too is money, that should have been available to Goberman. I don't care if (Goberman) didn't pay the electric light bill. . . . Goberman should have had the option as to whether the light bill was going to be paid or whether the loan that was the foundation of the whole business was going to be paid. (1649)*

"But the evidence showed that even though hundreds of thousands of dollars were collected by Parness and sent down to the hotel in the months of January, February, March and April 1971, Goberman wasn't able to get access to a nickel of it, and he testified . . . that when he arrived at the hotel during that period of time he found out that he couldn't even sign a check on the hotel's bank account. (1649)

* * *

". . . and the books are in evidence that show that marker collections from that time [February 1971] forward went down to St. Maarten Island in very large amounts, hundreds of thousands of dollars, which Goberman should have had available to him to pay off the loan which was now in form owed to Barbara Landew and Stanley Amsterdam, and it was part of the scheme to defraud Goberman that he wasn't allowed to have access to those funds in order to pay off that loan" (1670-1671).

Of course, after this new theory was handed to the jury, the defense could not come back. What the prosecution did in this case goes beyond the description of unfairness. It deliberately sought to mislead the jury in arguing that Goberman could not sign checks beginning with January 1971 and representing this incorrect set of facts as true when the Court specifically ruled that Goberman's testimony on this point was not admitted for the truth.

* It was improper, we maintain, for the prosecutor to articulate what he cared or didn't care about. (See p.19, infra.)

The Court's charge reflects clearly the Government's

equivocation and change in theory:

"First, and this is the crucial one [the Government must prove] that Mr. Parness devised a scheme or plan to defraud Mr. Goberman by using monies which Olympic or Parness obtained from the payment of markers, and so that they belonged to the hotel corporation; that they used these monies to acquire Mr. Goberman's interest in the stock of the hotel corporation" (1711) (Emphasis added.)

"As I understand it the government is contending that Mr. Parness collected money due on the markers from the junketeers or the gamblers but did not remit these amounts to the hotel. Or, if he did remit them, Mr. Goberman was denied their use." (1722) (Emphasis added.)

Paragraph 3 of the indictment contains 14 specifications of activity included in the alleged "pattern of racketeering activity." Nowhere in these specifications does the suggestion even appear that there existed the "new" alternative scheme articulated by the prosecutor in summation and the Court in its charge. There was never any charge that, as part of the alleged scheme, Milton Parness stripped Goberman of his power over the assets of the corporation, and the jury clearly rejected the Government's "threat - extortion" theory. (1733)

Besides the fact that the Government's "new" contention is totally false, its eleventh-hour about-face on the theory of the case was a deliberate and baldfaced attempt to secure a conviction at any cost.

B. The Prosecutor's Reference In Summation to the \$99,000 As Being "Collected and Squirrelled Up" in 1970 Went Beyond the Bounds of the Indictment and Proof

The prosecutor, in summation, argued that the \$99,000 in cash (which Barbara Parness brought to the bank in February 1971) was collected from casino players and stolen by Milton Parness during 1970.

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" . . . [a]nd I suggest to you that the evidence demonstrates circumstantially, beyond any doubt that what happened was that during the year 1970 Parness collected and squirrelled up \$99,000 in cash out of money that was due and owing to the St. Maarten Isle Hotel Corporation" (1660). (Emphasis supplied.)

Paragraph 2 of the indictment states that from on or about January 1, 1971, until the filing of the indictment, Milton Parness acquired Hotel Corp. through a pattern of racketeering activity. Further, paragraph 3(d) states that, beginning December 1, 1970, Milton Parness devised a scheme to defraud Goberman out of his stock interest in the hotel. In addition, paragraph 3(e) states that, beginning December 1, 1970, Parness collected hundreds of thousands of dollars belonging to the hotel, some of which money was deposited in Olympic's bank account.

In speaking to several of the jurors in this case subsequent to the rendition of their verdict, it became clear that the \$99,000 and its origin was a key factor in the jury's deliberations. The prosecutor's reference that the evidence demonstrates circumstantially, beyond any doubt, that Milton Parness in 1970 collected and squirrelled up the \$99,000 in cash out of marker monies was not only without foundation in the record, but beyond the scope and purport of the indictment. For if the scheme was born on December 1, 1970, that would allow Mr. Parness one month within which to collect and allegedly secrete \$99,000. The statement that monies were collected and secreted during the year 1970 is a patent enlargement and improper interpretation of the words of the indictment.

It is plain logic that the alleged squirrelling of the monies could not predate the germination of the scheme. To permit the jury to speculate that the monies were stolen or withheld from the Corporation prior to the inception of the alleged scheme was to permit the jury to convict the defendants on an improper basis.

Affidavit of Roy M. Cohn Annexed to Foregoing Post-Trial Motions 669e
By suggesting that the monies were stolen sometime

during 1970, instead of restricting it to a period subsequent to December 1, 1970, it permitted the jury to speculate on possible events not alleged or proven to be unlawful. If, instead, the jury was properly told that the time frame involved began December 1, the jury would have been considering a much shorter period of time when the \$99,000 could have been collected and stashed away by Mr. Parness. We strenuously maintain that with the proper time frame in mind, the jury could not rationally have concluded that Milton Parness collected and stole \$99,000 in marker monies.

The defendants respectfully submit further that the "1970 squirrel concept" is another example of the prosecutor's in-summation revision of the indictment. So, again, the defense, unable to speak after the prosecutor's summation, was faced with a distortion of the indictment and of the proof and could not come back to the jury.

Subsequent to the summation, counsel moved for a mistrial on the grounds that, with regard to the \$99,000, the prosecutor departed from the pleadings.* The prosecutor

*The original Bill of Particulars states:

"7(a) through (d). The Government does not know and will not attempt to prove the total number or dollar amount of markers collected or caused to be collected by Parness, or the dates of collection and remittances [to Parness]. (Emphasis supplied.)

* * *

9.. Marker collections deposited to Olympic's bank account at the West Orange branch of the National Newark and Essex Bank aggregated \$820,676.38 for the year 1971". (Emphasis supplied.)

24(a) through (c). The government does not know and will not attempt to prove the total amount of money diverted [by Parness].

24(d) The government does not know all those who paid monies [to Parness] but furnished the following information for the period February 4 through April 4, 1971. . ."
(Emphasis supplied.)

Affidavit of Roy M. Cohn Annexed to Foregoing Post-Trial Motions 670a
conceded that the indictment charged that the alleged scheme

began on December 1, 1970, and this Court agreed that "the important dates are certainly in 1971 and I will so indicate in my charge." (1691-1695) (Emphasis added.) It is submitted that the Court did not, at any point in its charge so indicate or direct the jury's attention to the prosecutor's improper reference to squirrelling monies during the year 1970.

C. The Prosecutor Improperly Referred
to the Defendants Not Taking the
Stand and Thus Irrevocably Prejudiced
the Defense

The prosecutor, in summation, interjected his personal characterization of the defendant by attributing to Milton Parness a "cleverness that approaches the diabolic" (1649-1650). Further, he opined that "this case shows a pattern of fraud and chicanery which is practically beyond belief." (1651) He falsely stated, in referring to Mr. Parness' use of nominees, "Now, we have not had an explanation as to why that was done." (1653)*

In this setting we approach the prosecutor's abuse of the defendants' right to remain silent and put on no defense when he, in discussing the \$160,000 loaned to Goberman, to pay off Holzer, stated:

"... and common sense tells you that if Mr. Parness had borrowed \$160,000 in February of 1971 the first witness that would have been on the stand for the defense would be the lender, or the lenders, or somebody who could substantiate this borrowing story.
(1655)

* * *

"And, ladies and gentlemen, I tell you if Parness had produced a lender for that \$160,000 on this witness stand, a bona fide lender who could show he put up the money, this case would be out the window and you would be home weeks ago. But that didn't happen. (1655) (Emphasis supplied.)

*Teffrey Stone testified why it was done (1291-1292).

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The prosecutor's improper reference to the lack of a

defense witness and to the fact that such witness would have enabled these jurors to have ended their service weeks prior, was compounded a few moments later with the prosecutor personally deriding the defense by characterizing it as "Phony, phony, phony. Shameful." (1656) (Only those of us unfortunate enough to hear the prosecutor's tone of voice and see the expression on his face can really comprehend the venom with which his statement was uttered to the jury!)

Building a crescendo of intensity, the prosecutor, pointing to the defendants, stated:

" . . . that the Parnesses, Mr. and Mrs., were trying desperately for quite a long period of time to find a cover story to hide the truth. But they don't tell you exactly what the truth was." (1659)

It is respectfully submitted that our law recognizes a defendant's right not to put on a defense and not to take the stand. The prosecutor's intentional references to the fact that the defense did not call a bona fide lender to the stand or that the Parnesses, both Mr. and Mrs., "don't tell you exactly what the truth was," when taken together with his other intemperate, false and ill-conceived remarks, mandates reversal of the convictions. We maintain that the language used by the prosecutor was manifestly intended and was of such character that the jury would naturally and necessarily take it to be a comment on the failure of the defendants to testify.

The United States Court of Appeals for the Second Circuit last month recognized "the frequency with which allegations of prosecutorial misconduct have come before this court".

The Court's comments were included in its opinion in

Affidavit of Roy M. Cohn Annexed to Foregoing Post-Trial Motions 672a
United States v. White (decided October 11, 1973), where the

Court found that although the prosecutor's comments were intemperate and ill-conceived*, prejudice was minimal because "proof of guilt was clear and convincing".

The Circuit Court cited six "prosecutorial misconduct" cases it considered in the past six months. In United States v. Drummond, 481 F.2d 62 (July 1973), the Court reversed a narcotics conviction on the ground of repeated misbehavior of the prosecutor, including expressions of his personal opinions concerning the guilt of the defendant and the testimony of witnesses. The Court stated:

"It is hardly necessary to cite authority to establish the impropriety of such conduct. See United States v. Grunberger, 541 F.2d 1062 (2d Cir. 1970); Greenberg v. United States, 280 F.2d 472 (1st Cir. 1960)" 481 F.2d, at p. 64.

In United States v. Miller, 478 F.2d 1315 (May 1973), the Court recognized conduct by the prosecutor which was ill-conceived and "close to the line".

In United States v. Fernandez, 480 F.2d 726 (May 1973), the Court made note that the summation by the Assistant "surely went to the verge and perhaps beyond it"

In United States v. Pfingst, 477 F.2d 177 (April 1973), the prosecutor, in an excess of zeal, asked the defendant to produce a key document. The trial judge immediately admonished the prosecutor and thereafter advised the jury:

*The prosecutor charged twice that the defendant was "lying" and indicated that the defense was "fabricated".

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"Ladies and gentlemen, it was improper for the Government attorney to make any such demand on the defendant, as I told you earlier, not only for the reasons I indicated, that is that the defendant is not obligated to produce anything, which I indicated at the outset of the case, and no inference against a defendant may be drawn from the fact that he doesn't produce anything. It is not his obligation. (at p. 187) (Emphasis supplied.)

On Appeal the Court acknowledged that the Government conceded that the demand was erroneous for it "obviously violated the principle that the burden is on the Government to prove the defendant's guilt beyond a reasonable doubt; it also goes to the defendant's privilege against self-incrimination." (at pp. 187-189)

The Court, in considering the question of whether the error was serious enough to require a new trial, stated:

"... In deciding this question we must consider, in the circumstances of this case, the degree of prejudice created in the minds of the jurors by the demand, the quality and forcefulness of the trial judge's corrective action and the strength of the Government's case. United States v. Semensohn, 421 F.2d 1206, 1208-1209 (2d Cir. 1970)" (at p. 189) (Emphasis supplied.)

The Court affirmed the conviction, holding the prejudice minimal - "an isolated incident near the beginning of a long and complex trial" -- as reinforced by the quantity and quality of the evidence against the defendant which he did not contest on appeal.

"This is not a case where that evidence was of such questionable weight that doubt exists as to whether the case should have been submitted to the jury altogether. We thus do not fear that the prosecutor's improper conduct may have tipped the scales of justice against appellant" (at p. 189. (Emphasis supplied.)

In the case at bar, the prosecutor's improper conduct -- set forth in this point and throughout this affidavit -- not only tipped the scales of justice against the defendants, but totally rendered it inoperative.

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D. The Prosecutor, In Summation,
Improperly Accused Milton Parness
of a Federal Crime, Not Charged
In the Indictment

The prosecutor, in referring to documents bearing the names of Milton Parness' nominees, stated:

"... and in fact those documents that were drafted in April, 1971, were used in bankruptcy proceedings in Philadelphia to try and create a false impression." (1672) (Emphasis supplied.)

* * *

"Parness had an interest in seeing to it that false documents were submitted in the Federal Court in Philadelphia." (1673)

The prosecutor was speaking of Exhibit 144, which contained a draft of an affidavit by Faigan. In fact, that affidavit was never submitted to any court (1253-1254). What was submitted to the Federal Court in Philadelphia was admitted into evidence as defendant's Exhibit "A" (1253-1254).

It is respectfully submitted that the prosecutor, having knowledge that Exhibit 144 was never submitted to any court, intentionally sought to prejudice the jury by his statements quoted above. To purposely suggest to the jury that Milton Parness committed a serious federal crime -- not charged in the indictment -- based on a totally false statement of the facts, is a glaring example of prosecutorial misconduct.

The following exchange took place when defense counsel objected to the prosecutor's statement:

"MR. COHN:

So on a combination of these things. . . oh yes. Parness submitted false documents to the Federal Court in connection with the Goberman bankruptcy, which of course, is not the evidence and is not the fact.

THE COURT:

I don't recall. Did you say that?

MR. MC GUIRE:

Not that Parness submitted them, but that he caused them to be submitted." (1687-1688)

false, intentionally misleading and clearly prejudicial.

E. The Taking of the Levery Deposition
Was Not Based on a Proper Authori-
zation and the Departure From the
Normal Progress of the Trial Violated
Defendants' Rights

By letter dated September 18, 1973, Assistant Attorney General Henry E. Peterson certified to this Court that this action is "against Milton Parness who I believe to have participated in an organized criminal activity which is the subject of this proceeding." (Emphasis supplied.) (See Exhibit "J" annexed hereto.)

It is apparent to all who participated in this trial that there was not even a suggestion that organized criminal activity was part of the facts of this case.

Even the prosecutor recognized this:

"... the proof shows that Parness and Parness alone prevented Goberman from obtaining a matter of \$150,000. out of the receipts of the hotel which he could have used to pay back the loan" (1646)

The aforesaid letter indicates that same was dictated by R. J. Campbell, who had led the investigation of this case since its early days. At the very least, it shows that Mr. Campbell received a copy of the letter.

We must assume that either Mr. Campbell or his subordinates provided Assistant Attorney General Peterson with the information which formed his belief communicated to this Court.

*No mention is made of Barbara Parness in the text of the letter. We submit that her rights were violated by directing the Levery deposition -- parts of which the Government claimed proved her a liar.

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In any event, Mr. Peterson's belief is belied by the record -- a fact known to the Government prior to its letter of September 18, 1973.

As a result of Mr. Peterson's letter and the Court's reliance thereon, the regular and orderly progress of the trial was disturbed. After two Court-ordered weekend treks to Florida, the deposition of a sedated cousin of Milton Parness was read to the jury. The jury had no opportunity to see and hear Mr. Levery respond to the questions and to employ the usual standards of gauging a witness' credibility.

This factor, when considered in connection with the Court's limitation of cross-examination of Mr. Levery, resulted in a highly prejudicial situation for the defendants.

Further, since there existed no legal reason for the taking of the deposition as against Barbara Parness -- there should have been a direction by the Court that the deposition was not to be considered as against her.

We heartily agree with the dissent by Judge Oakes in United States v. Singleton, 460 F.2d 1148, 1155 (2d Cir. 1972), wherein he calls into question the constitutionality of Section 3503. Judge Oakes' reasoning when juxtaposed upon the facts here leads to the unescapable conclusion that both defendants' rights were violated.

Surely, if Barbara were the sole defendant, there would have been no deposition of Levery. Barbara was not charged in the "racketeering count" and no certification would have been forthcoming. Yet, it was Levery's testimony that the prosecutor claimed showed Barbara to be a liar.

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The prosecutor knew of Levery's condition during the summer. He made no move to appoint a physician. During the trial the defense was forced to utilize the best part of their weekends traveling to and from Levery's home and hospital bed and in hotel rooms when the time could clearly have been used more productively. One weekend trip was after the Court had ruled the deposition closed and dismissed Counts Two and Three (946). Query: the Court having sustained Counts One, Four, Five and Six and dismissed Counts Two and Three, how was Levery's deposition material to prevent a failure of justice?

We maintain there was bad faith on the part of the Government with respect to the certification for and the taking of the Levery deposition. The Court should not have permitted same.

F. The Court Erred In Its Charge to the Jury

1. The Court's Continued Reference to "Racketeering Activity" Was Prejudicial

While the Court and counsel recognized that the word "racketeering" appears in Section 1961, et seq.*, the continued repetition of the word in the charge placed an obvious pall upon the proceedings.

Especially in light of the fact that the proof showed no organized criminal activity, the Court took no steps to limit its use of the word or call to the jury's attention that it was a statutory phrase bearing no relation to the definition that jurors are confronted with almost daily.

* One of the reasons we advance for the statute's unconstitutionality.

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**2. The Court's Charge on Criminal
Intent Was Inadequate**

The Court, while charging on Count One, stated that it would instruct the jury later regarding criminal intent (1728).

The Court, after a recess, while charging on Counts Four and Six (1736, et seq.), stated:

"And then the fourth element on each of these two counts again is that the defendant you are considering was acting knowingly, wilfully and unlawfully."

"And then the remaining Count is Count Five. . ."
(1740)

* * *

"And [the] fourth [element], the defendant you are considering, did he act knowingly, wilfully and unlawfully?"

"Now you see from all this, ladies and gentlemen, that about the defendant acting knowingly, wilfully and unlawfully, this is an essential element in all of these counts." (1742)

We submit that the Court's critical charge on criminal intent was not clearly related to Count One and could have easily been misunderstood to apply only to Counts Four, Five and Six.

**3. The Court's Emphasis on the Government's
Contentions Was Unfair to the Defendants**

During its charge, the Court continually emphasized the Government's "contentions" while generally stating, "of course, the defendants deny this." The Court erred, however, in advising the jury:

"If you find that the Government has proved their contentions, then, of course, you may find the defendant, Mr. Parness, guilty" (1731).
(Emphasis supplied.)

Clearly, the jury must find that the Government has proved the essential allegations of the indictment -- not what its contentions are.

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The Court erred further in instructing the jury:

"The Government contends that Parness used some of these monies (collected on markers) to make the loan of \$160,000. to Goberman in February, 1971. . . ." (1722)

This statement to the jury was incorrect since in its Bill of Particulars the Government stated:

"2. State whether the Government will allege that the source of the \$160,000. was marker or IOU collections?

Yes."

* * *

"4. State whether the Government will allege that the entire \$160,000. was Hotel Corp. money?

Yes."

Thus, the jury should have been instructed that they must find that the entire \$160,000 was the corporation's money, which Parness stole and then lent to Goberman.

It must be additionally noted that the defendants assert that it was error to prevent counsel from divulging the above-quoted portion of the Bill of Particulars to the jury.

**4. The Court Erred in Failing to
Give Defendants' Proposed Charge
on Goberman's Credibility**

The Court and counsel unanimously recognized that Goberman's credibility was the key issue in the case.

The Court, notwithstanding its additional expanded charge on Goberman's credibility, fell short of the request charge:

"I further charge you, that having carefully scrutinized the testimony of Mr. Goberman, you may not convict the defendants in this case unless you find beyond a reasonable doubt that his testimony is credible and believable as to the essential elements of the charge contained in the indictment."

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In light of the fact that Goberman (1) was the alleged victim of the fraud, (2) was the sole transactional witness for the Government, and (3) lied to the extent that the prosecution twice stipulated that portions of his testimony were untrue, the requested charge was the minimal instruction necessary to safeguard the defendants' rights.

G. The Testimony Regarding the Canadian Stock Issue -- After the Aliter and Terrasol Counts (Two and Three) Were Dismissed -- Was Prejudicial.

The Court, after the Government rested, dismissed Counts Two and Three (946). These counts charged Milton Parness with acquiring an interest in Aliter and Terrasol through the pattern of racketeering activity set forth in Count One.

Notwithstanding the dismissal of these counts, the Court permitted testimony concerning alleged irregularities in the Canadian Terrasol stock promotion. The prosecutor in summation seized on this testimony characterizing such promotion as a "phoney stock issue" (1678) and laying it all at Mr. Parness' doorstep.

Again, the effect on the jury had to be devastating -- and clearly prejudicial to the defendants.

III. MOTION FOR JUDGMENT OF ACQUITTAL

The Government did not prove the most important element in this case, namely, that Milton Parness stole, converted or took by fraud any monies belonging to Hotel Corp.

In the entire indictment there is not a single reference to alleged misuse of money subsequent to February 9, 1971. The indictment requires the Government to prove beyond a reasonable doubt that Milton Parness stole, converted and took by fraud \$160,000 between December 1, 1970 and February 9, 1971. To put it

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mildly, the Government did not prove that Milton Parness stole even one cent during that period --- or for that matter, at any time.

The record is long and filled with corporate counsel's visions of what the Uniform Commercial Code requires. But, the defendants maintain, with every ounce of vigor that can be mustered, that the proof as to the central issue in the case is nowhere to be found in the record.

The only witness who testified as to the amount of money allegedly collected on markers by Parness was Goberman.

On direct examination, Goberman testified that during the fall of 1970, the gambling junket business was brisk (58). Milton Parness was responsible for the deliverance of the junkets (59). On "some occasions" Goberman received oral and written reports from John Blandino* "as to how these junkets were doing" (59).

Exhibit 167 was the only casino work sheet Goberman identified and testified about.** In identifying the markings on the exhibit, Goberman stated that the figures in the column marked "pick-up" means that somebody is responsible to pick up that money for the casino (69) -- on that trip Goberman said Parness was responsible (69).

Goberman testified further that he had received "a few (other)" similar reports of the operations of other junkets during that same time period but those "are still in my files in St. Maarten" (70).

The record then reflects the following questions and answers:

* Blandino was Goberman's casino manager (60).

** It is significant to note that on the sole record used by Goberman at the trial, the words "Olympic Sport - Parness" appear. Clearly, Parness was not concealing his association as claimed.

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"Q So you have been able to retain some of these records, but not all?

A Not all of them, no, sir.

Q At the time Mr. Holzer was pressing you for the return of \$155,000, had you calculated from these reports how much money was due on markers?

A Yes, sir.

Q Do you remember what your calculation was from the reports that were given to you?

A I'd say it was somewhere around \$350,000 that was due on pick-ups.

Q Who was responsible for seeing to it that the casino collected that \$350,000?

A Mr. Parness was responsible."

On cross-examination, Goberman raised the figure to \$400,000. The following exchange occurred on cross-examination (472-473):

"Q I am talking about the point of time at which you say you arrived at the fact that \$400,000 gross or approximately \$350,000 after a reserve for bad debts -- at the time you made those calculations and included approximately \$74,000 for Selick, would it be fair to say that if that \$74,000 or any other amounts included by you in your total were not in fact collected then there would be, accordingly, deductions from the figure you gave us?

MR. MCGUIRE: Objection to the form of the question.

THE COURT: I don't understand that.

MR. MCGUIRE: All of these markers, according to the testimony, were not collected.

MR. COHN: Your Honor, that is exactly what I would like to find out.

THE WITNESS: I think I know what he is trying to say. If he could say it, I could answer it.

Q I would welcome your assistance, Mr. Goberman, if you know what I am trying to say.

A May I ask the question?

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You are trying to say if there was \$400,000 collected and \$75,000 -- or collectible -- and \$75,000 is not collected, would you say, Mr. Goberman, deduct \$75,000 from \$400,000, that it would only be \$325,000.

Is that what you are trying to say?

Q Yes.

A That is simple arithmetic. That could go down to \$100,000 if the other people didn't pay."

Goberman testified further (482):

"Q If I may ask this question on this whole general subject, as you are on this witness stand now, you cannot give us an itemization of what uncollected markers you included and what you did not include in the \$400,000 figure, is that so?

A I just took the flat, in my mind, 10 per cent, and I don't believe that I included Mr. --

THE COURT: That isn't quite clear, or the answer to the question.

I think the question is whether you, on the basis of these records, sitting here in that witness chair, you can reconstruct that \$400,000.

THE WITNESS: I can't reconstruct it without some assistance. There are some more papers some place.

THE COURT: You couldn't do it as you sit here now without those records?

THE WITNESS: No."

We submit that there can be no question that the Government did not prove, by any measure gauging evidence, that Milton Parness stole one cent from the hotel -- moreover, \$350,000 - \$400,000.

To permit a conviction to stand on such flimsy, inconclusive and legally insufficient testimony -- given by a totally incredible witness who has consistently lied under oath in the past and who plea-bargained his way out of jail -- is to sanction

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unfounded criminal prosecutions at the behest of those who
themselves should be before the bar of justice.

The record is replete with glaring holes in the proof.
We are satisfied that this Court is well acquainted with the
testimony. The entire thrust of the prosecution -- from top to
bottom -- is incredible.

Could any reasonable man conclude that Goberman did not
know that Barbara and Stanley Amsterdam were acting for Milton
Parness? Did Milton Parness hide from those involved in the
transaction -- or was he there in the flesh at every turn?

Was this transaction set up with strangers unknown to
Goberman and the others involved, or was it conducted openly -- in
New York, in St. Maarten and in New Jersey?

If this were to be a secret untraceable deal, would
Olympic checks and bank accounts be used, or would unknown enti-
ties totally unconnected with Milton Parness show up on the
record?

If this were truly a scheme to do in Goberman, we can
rest assured that it could have been successfully accomplished
without all the "legal" documents which burden this record.

Perhaps the jury did check their common sense at the
door when they began to deliberate, but the Court must insure that
such possible transgression does not wreak havoc in the lives of
these defendants.

To argue each and every flaw in the proof would take
countless pages and unduly burden this Court. We conclude this
point with the sincere plea that the evidence be viewed not only
in the most favorable light for the Government, as it must, but

* At that time, Bobbi was already looked upon as a daughter by
Goberman (497).

also in perspective of what is the truth and what really happened between Allan Goberman and Milton Parness.

We submit that the only real evidence in this case was improperly excluded by the Court.

Goberman testified:

Q. If the gambler paid the money he got back the IOU [marker]?

A. Yes, sir" (466)

John Blandino, Goberman's controller of the casino as of September 1970, also testified that paid markers were returned to the customer.

The defense then marked, as Exhibits "Q" and "R", for identification, packets of markers which Blandino recognized and identified as original markers executed at the casino for monies owed to the casino (985-988). The total amount was stipulated at \$155,000 (990).

The colloquy at the side bar reveals the critical importance of the markers (993-994). The Court ruled that the markers would not be allowed into evidence (998), notwithstanding its realization that if the originals exist the gambler "obviously" didn't pay (999). Exhibits "S", "T", "U", "V", "W", "X" and "Y" for identification were also held inadmissible notwithstanding Blandino's identification of them and his testimony that it was the standard procedure to execute the markers. It is also to be noted that the Court originally felt the markers were admissible when it remarked about the "weight to be given to the documents" (989).

We submit that it was error to exclude the markers. The jury could have determined that the markers established to its satisfaction that the monies Goberman said were collected were not.

IV. MOTION FOR ARREST OF JUDGMENT

A. Sections 1961, et seq., Title 18 U.S.C., Are Unconstitutional

This Court, in its May 1973 memorandum-order under the original indictment (73 Cr. 157), held that Sections 1961, et seq., Title 18 U.S.C., are constitutional in that they passed the test of vagueness and overbreadth. The defendants respectfully disagree with this Court's holding in this regard and ask the Court to reconsider its holding, especially in light of the trial record. The defendants urge that the statute, upon which Count One is based, is unconstitutional for the following additional reasons:

- (a) it is prejudicial per se in that it contains in its language the word "racketeering", which permits such appellation to be brought home to a jury;
- (b) it permits the Government to try a citizen for alleged crimes without providing for presentation to a grand jury as required by the Fifth Amendment;
- (c) it permits the Government to hold a person to answer to a serious crime for which he can no longer be indicted or convicted;
- (d) it permits the imposition of extraordinary criminal punishment without providing for the requisite mens rea;
- (e) it permits the Government to intentionally prejudice the rights of a defendant by providing a vehicle to expand two or more unconnected acts into an alleged nefarious course of conduct having no relation to the evil sought to be prevented by Congress;
- (f) it deprives an individual actor, whether guilty or innocent of wrongdoing, of equal protection of the laws in that it establishes an arbitrary classification, i.e., one engaged in a pattern of racketeering activity;

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- (g) it permits the charging of more than one crime in a count of an indictment, and
- (h) it permits the imposition of cruel and unusual punishment.

B. Count One of the Indictment Fails to Charge an Offense

Count One (the "pattern of racketeering" count) charges Milton Parness with violation of Title 18 U.S.C. §§ 1961, 1962(b) and 1963. Section 1961 contains, among other things, definitions of "racketeering activity" and "pattern of racketeering activity." Section 1962(b) states that it shall be unlawful for any person, through a pattern of racketeering activity, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. Section 1963 provides for imprisonment of up to 20 years and a maximum fine of \$25,000 upon conviction.

Chapter 96, entitled "Racketeer Influenced and Corrupt Organizations," became law on October 15, 1970. Prior to said date, "racketeering activity" or "pattern of racketeering activity" was not part of our laws.

Yet, Count One of the indictment (paragraph three) reads, in pertinent part, as follows:

"3. The pattern of racketeering activity engaged in and conducted by the defendant MILTON PARNESS included the following:

- (a) Beginning on or about April 1, 1970, defendant Milton Parness. . . collected and caused to be collected moneys belonging to Hotel Corp. . .
- (b) Beginning on or about September 1, 1970, defendant Milton Parness. . . supervised the arrangements for all junkets. . ."
(Emphasis supplied.)

While the defendants recognize that the "acts of racketeering" submitted to the jury allegedly occurred after the effective date of the legislation, Count One of the indictment describes conduct of Mr. Parness as part of the "pattern of racketeering activity" which conduct occurred prior to the effective date of the statute.

We submit that the indictment is fatally defective by its inclusion of alleged "racketeering conduct" which predated the law. When considered with the fact that the statute does not provide for criminal intent, it is clear Mr. Parness' conduct could not be considered to be a violation of the statute or unlawful.

The prejudice is plain. An indictment that alleges conduct which is criminal, before Congress declares it criminal, cannot support a conviction.

C. The Verdict of the Jury
Is a Nullity

In a situation which appears to be unique, the defendants were convicted by a jury that did not deliberate after being given clarifying instructions from the Court.

The record reveals the following occurred during the jury's deliberation (1733):

"(At 3.30 p.m., a note was received from the jury.

(In the robing room)

THE COURT: Gentlemen, I received this note.

"Sir:

'We are about to reach a decision but we need some clarification on one point. Thank you, Morris Edelstein.'

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I think the only thing I can do is to ask them to come in and I will ask them what the point of clarification is and then I will discuss it with you probably at the side bar.

MR. COHN: All right, sure.

THE COURT: Is that agreeable, gentlemen?

MR. MCGUIRE: Sure.

THE COURT: All right. I think that is the only thing to do.

(In open court, jury present.)

THE COURT: Good afternoon, ladies and gentlemen.

Mr. Edelstein, I received your note, which reads 'We are about to reach a decision but we need some clarification on one point.'

Would you indicate the point you wish some clarification on?

JUROR No. 1: Where in the indictment can we eliminate the threat, demanding, threatened or coerced?

THE COURT: I'm sorry. That siren there just came at the wrong time.

What was that again?

JUROR No. 1: We couldn't determine on the indictment where we could eliminate this threat or the coercion.

THE COURT: That is mentioned in the indictment and I think I told you that the government did not have to prove all of the things in that indictment, that the government would have to prove, before you could convict under count 1, that at least two of those three alleged crimes were committed.

JUROR No. 1: Outside of that we have come to a verdict.

THE COURT: Are you prepared to receive the verdict?

Does that answer your question?

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JUROR No. 1: Yes, sir.

THE COURT: All right.

Would you proceed, Mr. Wallace?

(Jury roll called. All present.)

BY THE CLERK:

Q Mr. Foreman, has the jury reached a verdict?

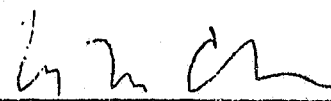
A Yes, sir."

Immediately after the Court advised the jury that they need not find that Milton Parness threatened Goberman, the Foreman turned to the other members of the jury, received some nods, and announced that there was a verdict.

The jury was not directed to return to the jury room and consider the information provided by the Court. In fact, the jury finalized their deliberations while seated in the jury box.

Notwithstanding the poll of the jury, the premature verdict may not reflect the feelings of all the jurors should they have been directed to retire to the jury room and discuss their feelings in light of the Court's instructions.

In conclusion, the points and arguments set forth in support of the defendants' motions for post-conviction relief are advanced in the earnest belief that, upon consideration of same by this Court, the grave injustice inflicted upon Milton and Barbara Parness will be swiftly rectified.


Roy M. Cohn

Sworn to before me this
9th day of November, 1973


Notary Public

MICHAEL ROSEN
Notary Public, State of
New York
No. 41-3545703
Exp. 12/31/75
JAN 10 1974
NEW YORK COUNTY CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA :

v. :

NOTICE OF MOTION

73 Cr. 750 (DBB)

MILTON PARNESS and
BARBARA PARNESS, :

Defendants. :

----- x

S I R :

PLEASE TAKE NOTICE that, upon the annexed affidavits of ROY M. COHN, LORIN DUCKMAN and MILTON H. L. SCHWARTZ, sworn to December 13 and 20, 1973, the defendants, Milton Parness and Barbara Parness, will move this Court on January 14, 1974, in Room 1505 of the United States Courthouse, at 9:30 A. M., or as soon thereafter as counsel can be heard, for the following relief:

I. For an order pursuant to Rule 33 F.R.Cr.P. granting the defendants a new trial based on newly discovered evidence, or, in the alternative, for a hearing to determine whether the Government suppressed evidence favorable to the defendants, and did not fulfill the requirements imposed upon it under Brady v. Maryland, and

II. For such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
December 26, 1973

Yours, etc.,

ROY M. COHN
Attorney for Defendants
39 East 68th Street
New York, New York 10021
(212) 472-1400

TO:

United States Attorney
Southern District of New York

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The Government, in its memorandum in opposition to defendants' post-trial motions (p. 6), stated:

"Furthermore, the government represents that the Hotel Corporation bank account records were not in the prosecutor's possession at or before the time of trial, since the Bank of Nova Scotia had declined to make them available." (Emphasis supplied.)

Your deponent, by letter dated November 27, 1973 (copy of which is annexed hereto as Exhibit 1) advised this Court that we had been informed that, in fact, IRS Special Agent William Glaze ("Agent Glaze") and an American attorney -- prior to trial -- had met with the managing director of the Bank, who made available to Agent Glaze Hotel Corp.'s bank records.

Although said letter contained a request for a hearing on the issue, the Court did not advise that any hearing would be held.

On December 7, 1973, during the argument of the motions, the prosecutor stated that Agent Glaze would dispute the defendants' contentions at any hearing.

Defense counsel then offered to produce the American attorney -- Milton Schwartz -- to testify at such a hearing concerning the Government's prior access to the bank records. The Court ruled that a formal motion for such a hearing would be necessary. This motion is made pursuant to such ruling.

The annexed affidavit of Milton Schwartz speaks for itself. It is clear that Agent Glaze had made available to him Hotel Corp.'s bank records.

We submit that the Government's failure to advise defendants of the contents of the records -- even assuming arguendo, lack of physical possession of same -- done perhaps deliberately -- is a clear violation of Brady.

At the very least, we ask this Court to direct a hearing at which Messrs. Schwartz and Glaze can testify concerning their meeting at the Bank.

The attached affidavit of Lorin Duckman, one of the young law clerks in my firm, demonstrates that Hotel Corp.'s records (Exhibit "A" and "F"), made available to him, were at the Bank on October 25, 1973.

Surely, these same records were at the Bank when Messrs. Glaze and Schwartz went to the Bank late in May 1973.

It must be noted that those men went to the Island and the Bank specifically to provide Agent Glaze with Hotel Corp.'s records and Mr. Schwartz specifically authorized the release and production of all the Hotel Corp.'s records.

Certainly, Agent Glaze -- who had "made" the tax cases against Goberman and who worked with Goberman to create the case against the defendants herein -- saw that Goberman did not deposit the \$40,000 check (GX23) in Hotel Corp.'s account (Exh. "A") and that Goberman was not removed from authority to sign checks on the corporation's account (Exh. "F").

We strongly contest the Government's representation to this Court that the bank had declined to make the records "available."

The defendants further move for a new trial on the grounds that the Government withheld from the defense at least three statements which are exculpatory to the defendants.

At the sentencing "hearing" conducted by this Court on December 7, 1973, Agent Glaze testified that he interviewed Judith Amsterdam, Phillip Cassella and Jeffrey Vail in connection with their affidavits submitted by Mr. Parness' New Jersey tax counsel. Reports of Glaze's interview with Amsterdam and Cassella -- and I believe, Vail -- were produced upon my demand.

Affidavit of Roy M. Cohn Annexed to Foregoing Post-Trial Motion 695a

In the short time I had to read these reports it was clear that each of the persons had reported to Glaze that they had given Parness money just prior to Parness' loan to Goberman. In fact, \$61,000 was accounted for, i.e., \$26,000 from Amsterdam at Travel Time; \$30,000 from Cassella and \$5,000 from Vail.

In light of the fact that Agent Glaze was told by counsel that this \$61,000 was part of the funds Parness used for the Goberman loan, the Government's failure to reveal and turn over these reports violated Brady. These reports contain material which counters the Government's contention that the entire \$61,000 was money stolen or taken by fraud from Goberman.

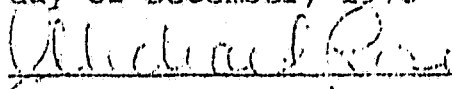
In addition, we have learned that Agent Glaze interviewed one Dr. Harvey Grant, a physician in Massachusetts, who told Glaze that he had given Parness at least \$30,000 in early February 1971. If Glaze followed required procedure, he would have made a report of such interview as well. Again, said report was not made known to the defense. Once more, knowledge of funds -- not coming from Goberman -- was in the Government's possession prior to and during the trial.

In light of the above, the defendants respectfully ask this Court to hold a hearing to determine whether the Government withheld evidence exculpatory to the defendants.



/Roy M. Cohn

Sworn to before me this 20th
day of December, 1973



MICHAEL ROSEN
NOTARY PUBLIC, State of New York
No. 413344703
Qualified in Queens County
Commission Expires March 31, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

MILTON PARNES and
BARBARA PARNES,

Defendants.

AFFIDAVIT

73 Cr. 750

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

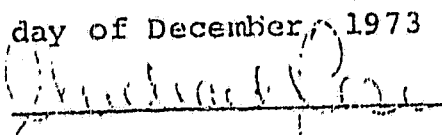
LORIN DUCKMAN, being duly sworn, deposes and says:

1. I am a law clerk in the office of SAXE, BACON, BOLAN & MANLEY. On October 25, 1973, I went to the Bank of Nova Scotia ("the Bank"), Phillipsburg, St. Maarten, with Richard Gibson, Esq., one of the Bank's attorneys and one of the receivers appointed for the St. Maarten Isle Hotel Corporation, N.V. ("Hotel Corp.").

2. Mr. Gibson authorized Mr. Boyko, whom I believe is the Managing Director of the Bank, to make available to me Hotel Corp.'s bank statements for October, November and December 1970. Mr. Boyko provided me with such bank statements, copies of which are annexed hereto as Exhibit "A".


Lorin Duckman

Sworn to before me this 20th
day of December, 1973


MICHAEL ROSEN
NOTARY PUBLIC, State of New York
No. 41-3,43703
Qualified in Queens County
Commission Expires March 20, 1975

AFFIDAVIT OF MILTON H. L. SCHWARTZ ANNEXED TO FOREGOING POST-TRIAL 6978
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MOTION

----- :
UNITED STATES OF AMERICA, : AFFIDAVIT
 :
-against- (/ : 73 Cr. 750
 :
MILTON PARNES and BARBARA PARNES, :
 :
Defendants. :
----- :

STATE OF NEW YORK)
)ss. :
COUNTY OF NEW YORK)

MILTON H. L. SCHWARTZ, being duly sworn, deposes and
says:

I am an attorney at law admitted to the Bar of the State of
Pennsylvania and have been practicing for nearly 40 years. For the past
17 years I have also been engaged in financial public relations for various
clients in the United States and elsewhere. In May of 1973 I was the attorney
and attorney-in-fact for Mr. Edward Levrey who is also a very close personal
friend for many years. Upon Mr. Levrey's departure for St. Maarten in
December of 1970, he requested me to act under a power of attorney-in-
fact in all matters as if he were personally acting.

Sometime during the Spring of 1973, I met with Mr. R. J.
Campbell, an attorney with the United States Department of Justice, in
Newark, New Jersey. At that meeting was Maurice Edelbaum, Esq.,
Special Agent William Glaze and Mr. Levrey. The discussion centered
upon assisting the Government in obtaining records and information relative
to this action which records might be available on the Island of St. Maarten.

**Affidavit of Milton H.L. Schwartz Annexed to Foregoing Post-Trial 698a
Motion**

We agreed to assist the Government in any way they suggested might be helpful.

Thereafter, in approximately late April or early May, 1973, it was suggested to me--because of concern over Mr. Levrey's health and possible loss of employment--that I act under my power of attorney-in-fact from Mr. Levrey and meet with Agent Glaze in St. Maarten on an agreed date and act in place and stead of Edward Levrey in securing for the Government whatever was available that they desired to inspect.

Approximately May 26th, I flew to St. Maarten and that evening met Agent Glaze and Mr. Van Dam (ph), the Police Chief of the Island, at the Little Bay Beach Hotel. At that point we made plans to go to the Bank of Nova Scotia, Phillipsburg, St. Maarten. The following morning, Agent Glaze and I rode together in a taxi cab to the Bank of Nova Scotia. When we arrived we were asked to wait to meet with the Managing Director of the bank with whom a previous appointment had been made. The aforesaid Chief of Police was also at the bank. We also had to await the arrival of Mr. Vander Voort or Mr. Richard Gibson who were both attorneys in some capacity with or for the bank. Mr. Gibson did arrive and I know that someone from the bank communicated with Mr. Vander Voort.

Mr. Glaze and I together with the Managing Director went into the latter's private office. At that time the Bank Manager, who I believe was a Mr. Boyko (ph), produced for Mr. Glaze and myself the bank records pertaining to St. Maarten Isle Hotel Corporation. I had specifically

**Affidavit of Milton H.L. Schwartz Annexed to Foregoing Post-Trial
Motion**

authorized the release and production of all the Hotel Corporation's bank records that the bank possessed--as if I were Mr. Levrey. I do specifically recall checks and ledger sheets being shown to Agent Glaze and myself. I also specifically recall that Mr. Glaze requested me to leave the room and wait for him so that he could converse privately with the Bank Manager. This period of time consumed approximately 45 minutes. After the period of approximately 45 minutes, Mr. Glaze and the Bank Manager emerged and the Bank Manager politely said goodbye.

Thereafter, I returned to my hotel with Mr. Glaze and assisted him in acquiring certain other information from personnel and from papers which were located in the Hotel. After this, I returned to the United States by airplane.

Milton H. L. Schwartz
MILTON H. L. SCHWARTZ

Sworn to before me this 13th
day of December, 1973.

Michael Rosen

MICHAEL ROSEN
NOTARY PUBLIC, State of New York
No. 41-3348703
Qualified in Queens County
Commission Expires March 30, 1975

Exhibit A - Bank Record

701a

ST. MARTEN ISLE HOTEL
PHILIPSBURG
St. Maarten, N. ...

THE BANK OF NEDERLAND
CURRENT ACCOUNT
LEDGER LEAF

NOTICE - For your protection only a portion of your Account Number appears on this statement.
Please use your FULL account number when writing cheques or making deposits.

CHEQUES	CHEQUES	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD				
			20	1500.73
5.40 DW	150.00	455.85	26	2058.82
4460.00		66.20		
2635.08	7500.00	9838.83	30	3088.37
5.40	106.30			
2989.31			40	6190.33
2101.29			50	8291.67
215.29		73.77	60	8430.10
1361.56			9	10294.73
1155.00			10	11449.73
18300.98	50.00		12	50500.73
707.92		1894.73	13	12059.90

FOLD

THIS STATEMENT WILL BE CONSIDERED CORRECT EXCEPT AS TO ERRORS OR OMISSIONS REPORTED WITHIN THIRTY DAYS OF DELIVERY OR MAILING

STATEMENT AND VOUCHERS MAILED

DATE

AUTHORIZED OFFICER

Exhibit A - Bank Record

702a

STANTON BANK
 352 Jackson, N. Y.

THE HANCOCK TRUST COMPANY
 CREDIT ACCOUNT
 1200 N. Y.

NOTICE - For your protection only a portion of the account number appears on this statement. Please mark and fill account number while making deposits or making checks.

CHECKS	CHECKS	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD				
270531LS	142.82 CH	7334.32	NOV 15 D	12039.49
1179950LS ✓			NOV 16 D	7553.17
190250LS		23000.00	NOV 18 D	12333.17
1.60 SC			NOV 19 D	3742.79
1730.60 ✓			NOV 19 D	2017.19
5315.09LS ✓			NOV 20 D	3302.50
754.60LS ✓	100.00 CH	5485.95	NOV 23 D	1128.45
5203.54LS ✓			NOV 24 D	4073.09
209.51LS ✓	41.00 CH		NOV 25 D	6214.70
60.11 "			NOV 26 D	6274.81
681.89LS ✓	323.40 CH	4965.80	NOV 26 D	2314.30
Tot 3490.87LS ✓			NOV 27 D	5025.17
3302.11LS ✓		6934.95	NOV 30 D	2179.33
15000.00 X			NOV 30 D	17179.33
20.8 3049.		25000.00	DEC 1 D	12653.33
100.00 W			DEC 2 D	1316.33

Exhibit A - Bank Record

703a

NAME

2-10-25

ST. PAUL HOTEL
Phillipsburg,
St. Martin, N.A.

THE BANK OF AMERICA
CURRENT ACCOUNT
LEDGER 1247

NOTICE - For your protection only a portion of your account number appears on this statement. Please use your full account number when writing checks or making deposits.

CHEQUES	CHEQUES	DEBITS	DATE	BALANCE
BALANCE BROUGHT FORWARD 2 D				
FOOD 11789.44 45	215.35 / 24	8	DEC 3 D	13163.23 40
4546.54 15		6	DEC 4 D	25158.42 78
488.53 15		3	DEC 7 D	29714.96 03
3732.93 15	30 60	5	DEC 8 D	14406.44 00
7267.87		4	DEC 9 D	13076.42 00
709.15 15		3	DEC 10 D	20346.29 70
881.59 15		4	DEC 11 D	21035.04 00
1211.03		4	DEC 14 D	21941.02 00
				5,241.50 00

Exhibit A - Bank Record

704a

ST. MARTIN ISLE HOTEL,
Phillipsburg,
St. Martin, N.A.

THE DATE OF THIS STATEMENT

CURRENT ACCOUNT
EDGEMUND

"Operations Account"

NOTICE - For your protection only a portion of your Account Number appears on this statement.
Please use your full account number when writing checks or making deposits.

CHEQUES	CHEQUES	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD				
3592.79 LS ✓			DEC 13 W	3251.58 00
2977.46 LS ✓	254.30 / IN		DEC 16 W	1083.53 00
160.00			DEC 17 W	1405.23 00
4856.78 LS ✓	1259.60 / IN		DEC 18 W	14226.33 00
3029.21 LS	2238.72 EC		DEC 21 W	20343.23 00
912.18 LS ✓		2878.45	DEC 22 W	14493.99 00
149.96 IN		17529.75	DEC 23 W	2123.58 00
4504.58 LS ✓	30000.00 DM	7.949.88	DEC 28 W	1373.62 00
1736.00 / IS		2000.00	DEC 29 W	24581.08 00
1.60 SC	11103.17 S			24317.08 00
340.20 ✓		12986.20		
		20000.00	DEC 30 W	2775.85 00

FOLD

THIS STATEMENT WILL BE CONSIDERED CORRECT EXCEPT AS TO ERRORS OF OMISSION REPORTED WITHIN THREE DAYS OF DELIVERY OR MAILING.

STATEMENT AND VOUCHERS MAILED
DATE
AUTHORIZED SIGNATURE

EXHIBIT B - BANK AUTHORIZATION

705a

"Operations Account"		ACCT. NO.
ST. MAARTEN ISLE HOTEL		2-14-15
NAME	[Redacted]	
SIGNATURE	[Redacted]	
SIGNATURE	John Klumbius	
SIGNATURE	Edmund W. Gurey	
SIGNATURE	[Redacted]	
OPENED	[Redacted]	
CLOSED	Close	
NO. 2491 601204 PRINTED IN CANADA		HOB. OR ACCT.

EXHIBIT I - LETTER DATED NOVEMBER 27, 1973 TO DUDLEY B. BONSAI
FROM ROY M. COHN

706a

Saxe, Bacon, Bolan & Manley

39 EAST 68TH STREET
NEW YORK, NEW YORK 10021

JOHN GODFREY SAXE (1909-1953)
ROGERS H. BACON (1919-1962)

(212) 472-1400

THOMAS A. BOLAN
COUNSEL

ROY M. COHN
SCOTT E. MANLEY (ADMITTED ILLINOIS AND INDIANA)
DANIEL J. DRISCOLL

November 27, 1973

MELVYN RUBIN
MICHAEL ROSEN
HAROLD L. SCHWARTZ

Hon. Dudley B. Bonsai
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Milton Parness and
Barbara Parness, 73 Cr. 750

Dear Judge Bonsai:

In view of the fact that all proceedings in the above entitled action were adjourned to December 7, 1973, we herewith submit the defendants' reply memorandum. The reply memorandum was prepared over this past weekend and recognizes the Government's disclaimer regarding possession of the Hotel Corporation bank account records "since the Bank of Nova Scotia had declined to make them available" (p. 6 - Government Memorandum In Opposition).

We wish to advise Your Honor, however, that on Sunday, November 25, 1973, we were informed that this summer prior to the trial, I. R. S. Agent Glaze, the Police Chief of St. Maarten and an American attorney--armed with an appropriate power of attorney required by the Bank--met with the managing director of the Bank of Nova Scotia, who made available to Agent Glaze Hotel Corporation bank records.

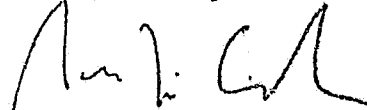
The aforesaid attorney has requested that, in lieu of an affidavit concerning this event, he be permitted to personally advise Your Honor as to the events described above.

Exhibit I - Letter Dated November 27, 1973 to Dudley B. Bonsal 707a
From Roy M. Cohn

Luzzo, Bacon, Bolton & Manley

We respectfully ask Your Honor to consider this letter as a request for a hearing to determine whether the Government fulfilled its obligations under Brady v. Maryland.

Respectfully,



Roy M. Cohn

RMC:lc

cc: United States Attorney
Southern District of New York
Att: A. U. S. A. McGuire

EXHIBIT 22 - COPY OF GOBERMAN'S PERSONAL ACCOUNT BANK STATEMENT

708a

NAME

137-11

GOBERMAN, Mr. Allan H.
St. Martin Isle Hotel
Phillipsburg
St. Maarten, N. A.

THE BANK OF NOVA SCOTIA

CURRENT ACCOUNT
LEDGER LEAF

NOTICE - For your protection only a portion of your Account Number appears on this statement.
Please use your FULL account number when writing cheques or making deposits.

CHEQUES	CHEQUES	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD		150,000.00		
135 DM			OCT 12 W	149,998.65 *
2000.00	50,000.00		OCT 16 W	97,998.65 *
25,000.00			OCT 20 W	72,998.65 *

THIS STATEMENT WILL BE CONSIDERED CORRECT EXCEPT AS TO ERRORS OR OMISSIONS REPORTED WITHIN THIRTY DAYS OF DELIVERY OR MAILING.

STATEMENT AND VOUCHERS MAILED

DATE

AUTHORIZED OFFICER

EXHIBIT B - GOBERMAN'S BANK STATEMENTS FOR NOVEMBER AND DECEMBER

COBERMAN, Mr. Allan N. 1970

St. Maarten Isle Hotel.

Philipsburg,

St. Maarten, N.A.

THE BANK OF NOVA SCOTIA

CURRENT ACCOUNT
LEDGER LEAF

709a

NOTICE - For your protection only a portion of your Account Number appears on this statement. Please use your FULL account number when writing cheques or making deposits.

CHEQUES		CHEQUES	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD 2 TO					72,998.658
25,000.00				NOV 2 TO	97,998.658

STATEMENT WILL BE CONSIDERED CORRECT EXCEPT AS TO ERRORS OR OMISSIONS REPORTED WITHIN THIRTY DAYS OF DELIVERY OF MAILING.

THIS STATEMENT WILL BE CONSIDERED CORRECT EXCEPT AS TO ERRORS OR OMISSIONS REPORTED WITHIN THIRTY DAYS OF DELIVERY OR MAILING.

STATEMENT AND VOUCHERS MAILED

DATE _____

AUTHORIZED OFFICER

Exhibit B - Goberman's Bank Statements for November and December 1970 710a

GOBERMAN, Mr. Allan N.
St. Maarten Isle Hotel
St. Maarten, N. A.

THE BANK OF NOVA SCOTIA
CURRENT ACCOUNT
LEDGER LEAF

NOTICE - For your protection, only a portion of your Account Number appears on this statement. Please use your FULL account number when writing cheques or making deposits.

CHEQUES	CHEQUES	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD				
40000.00			NOV 15 70	97,998.63
360.94	25,000.00 DM		NOV 18 70	57,998.65 *
500.00			DEC 1 70	32,637.71 *
			DEC 7 70	32,137.71 *
STATEMENT WILL BE CONSIDERED CORRECT EXCEPT AS TO ERRORS OR OMISSIONS REPORTED WITHIN THIRTY DAYS OF DELIVERY OR MAILING.				

STATEMENT AND VOUCHERS MAILED

DATE

AUTHORIZED OFFICER

Exhibit B - Goberman's Bank Statements for November and December 1970

712a

GOBERMAN, Mr. Allan H.
St. Maarten Isle Hotel,
St. Maarten, N.A.

THE BANK OF NOVA SCOTIA

CURRENT ACCOUNT
LEDGER LEAF

NOTICE - For your protection only a portion of your Account Number appears on this statement.
Please use your FULL account number when writing cheques or making deposits.

CHEQUES	CHEQUES	DEPOSITS	DATE	BALANCE
BALANCE BROUGHT FORWARD				
			DEC 15 70	32,137.71 s.
381.99			DEC 22 70	31,755.72 *
764.57	373.15		DEC 29 70	30,518.00 *
20,000.00 PM			DEC 30 70	10,613.00 *
179.41	500.00		JAN 4 71	9,938.59 *
569.25			JAN 11 71	9,369.34 *
2,101.29			JAN 12 71	7,268.05 *

THIS STATEMENT WILL BE CONSIDERED CORRECT EXCEPT AS TO ERRORS OR OMISSIONS REPORTED WITHIN THIRTY DAYS OF DELIVERY OR MAILING.

STATEMENT AND VOUCHERS MAILED

DATE

AUTHORIZED OFFICER

EXHIBIT C - CHECK DATED MARCH 26, 1971

713a

USA 835-475
(ED. 4-23-71)

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

67

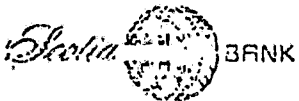
5992

March 26 1971
DATE

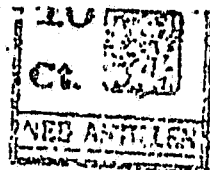
FPI-XI-2-2-73-10H-8753

THE BANK OF NOVA SCOTIA N.V.

ST. MAARTEN



NETHERLANDS ANTILLES



AGAINST THIS CHECK
PAY TO ORDER OF

Mr. Allan Cohen

U.S. 1000.00

SUM OF

one thousand 00/100

U.S. DOLLARS

CCL NO. 3710-15

[Handwritten signature]

EXHIBIT C

EXHIBIT D - CHECK DATED APRIL 15, 1971

7148

USA 33a-475
(ED. 4-23-71)

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

90

5999

DATE April 15, 1971

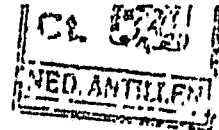
THE BANK OF NOVA SCOTIA N. V.

ST. MAARTEN

NETHERLANDS ANTILLES



FPI-MI-2-2-73-104-8753



AGAINST THIS CHEQUE
PAY TO ORDER OF

Mr. Allan Cyberman

U.S. \$ 1000.00

SUM OF

one thousand 00/100

U.S. DOLLARS

ACCT. NO. 2-10-15

[Handwritten signature]

EXHIBIT E - CHECK DATED MAY 13, 1971

715a

USA 335-475
(ED. 4-23-71)

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

99

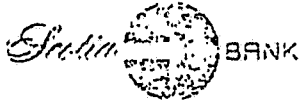
22453

DATE May 13th 1971

FPI-61-2-2-73-10M-8753

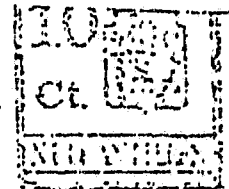
THE BANK OF NOVA SCOTIA N. V.

ST. MAARTEN



BANK

NETHERLANDS ANTILLES



AGAINST THIS CHEQUE
PAY TO ORDER OF

A. Gubernan

U.S. \$

SUM OF

One thousand

U.S. DOLLARS

ACCT. NO.

2-14-14

ST. MAARTEN ISLE HOTEL

[Handwritten signature]



LAW OFFICE
Dr. J.G.M. SPEETJENS

P. O. BOX 150
PHILIPSBURG
SINT MAARTEN (N.W.I.)
NETHERLANDS ANTILLES

CONTENTS: COPY OF THE MORTGAGE DEED
i.f.o.

WINDWARD ISLANDS BANK LTD.
chargeable to
SINT MAARTEN ISLE HOTEL
CORPORATION N.V.

DATE OF DEED: April 5th, 1971



mn

Exhibit G - Mortgage Deed Dated April 5, 1971

717a

Upon this fifth day of April nineteenhundred and seventy-one, --
came and appeared before me, Doctor Josephus Gerardus Maria ----
Speetjens, Civil-Law Notary, of the Island Territory of the ----
Windward Islands, residing at Philipsburg, Sint Maarten, in the
presence of the witnesses to be mentioned hereinafter: -----

1. Mister ALLAN NORRIS GOBERMAN, a hotel proprietor, resi-
ding at Sint Maarten, by these presents according to his
declaration acting as Director of the limited liability
corporation "SINT MAARTEN ISLE HOTEL CORPORATION N.V."
established on Sint Maarten, Netherlands Antilles, here-
inafter to be referred to as the "Debtor"; -----
2. Mister JOHANNES FRANS JANSEN, a banker, residing at Sint
Maarten, according to his statement acting in his capaci-
ty of Manager of the WINDWARD ISLANDS BANK LTD., a limi-
ted liability company established at Philipsburg, Sint
Maarten, and as such lawfully representing the aforemen-
tioned Bank, hereinafter to be referred to as the "Bank";

The appearers declared the following: -----

The Debtor owes the Bank as appears from two promissory notes
dated respectively May fifteenth nineteenhundred and seventy and
August twenty-eighth nineteenhundred and seventy and signed by
the appearer sub 1 of which promissory notes photocopies will be
attached to the original of this deed after having been authen-
ticated by the appearers, the witnesses and me Civil-Law Notary,
with interest and commission till March fifteenth nineteenhundred
and seventy-one, and costs to the amount of FIVE HUNDRED AND ---
THIRTY ONE THOUSAND SEVEN HUNDRED AND FIFTY GUILDERS -----
(NAfls. 531,750.--) CURRENCY OF THE NETHERLANDS ANTILLES. -----

Said amount of FIVE HUNDRED AND THIRTY ONE THOUSAND SEVEN HUN-
DRED AND FIFTY GUILDERS (NAfls. 531,750.--) CURRENCY OF THE ----
NETHERLANDS ANTILLES, will be repaid by the Debtor to the Bank
as follows: -----

On April eighth nineteenhundred and seventy-one, the amount of
FIFTEEN THOUSAND DOLLARS (US\$ 15,000.--) CURRENCY OF THE UNITED
STATES OF NORTH AMERICA or TWENTY EIGHT THOUSAND AND FIFTY GUIL-
DERS (NAfls. 28,050.--); -----

On April fifteenth, nineteenhundred and seventy-one, the amount
of TWENTY-FIVE THOUSAND DOLLARS (US\$ 25,000.--) CURRENCY OF THE
UNITED STATES OF AMERICA or FORTY SIX THOUSAND SEVEN HUNDRED AND
FIFTY GUILDERS (NAfls. 46,750.--) CURRENCY OF THE NETHERLANDS
ANTILLES and furthermore on the fifteenth of each subsequent ---
month the amount of TEN THOUSAND DOLLARS (US\$ 10,000.--) CURRENCY

Exhibit 6 - Mortgage Deed Dated April 5, 1971

718a

OF THE UNITED STATES OF NORTH AMERICA or EIGHTEEN THOUSAND SEVEN HUNDRED GUILDERS (NAfls. 18,700.--) CURRENCY OF THE NETHERLANDS ANTILLES together with the interest over the balance due to the Bank at that moment at the rate of TEN PERCENT (10%) per annum, augmented with 1/4% (ONE/QUARTER PERCENT) commission until aforesaid amount is paid in full. -----

As a security for the repayment to the Bank of aforesaid amount of FIVE HUNDRED AND THIRTY ONE THOUSAND SEVEN HUNDRED AND FIFTY GUILDERS (NAfls. 531,750.--) augmented by all interest for the running year and two subsequent years and all expenses in connection herewith estimated at ONE HUNDRED AND FORTY-FOUR THOUSAND GUILDERS (NAfls. 144,000.--) CURRENCY OF THE NETHERLANDS ANTILLES the Debtor herewith grants the Bank the right of THIRD MORTGAGE on the following immovable properties: -----

1. The right of long lease till April eighth two thousand and ---
--twenty-five, on a parcel of land situated on Sint Maarten,
--with an area of TWENTY SIX THOUSAND AND SIXTY SQUARE METERS
--(26,060 M2) being the parcel of land with a total area of ---
--TWENTY NINE THOUSAND NINE HUNDRED AND TWENTY SQUARE METERS
--(29,920 M2), described in Certificate of Measurement number
--39 of the year nineteen hundred and sixty-three, less the par-
--cel of land with an area of THREE THOUSAND EIGHT HUNDRED AND
--SIXTY SQUARE METERS (3860 M2), specified in Certificate of ---
--Measurement number 70 of the year nineteen hundred and sixty-
--four. -----
2. The right of long lease till April twelfth two thousand and ---
--twenty on two parcels of land situated at Sint Maarten, with
--an area of respectively SIX HUNDRED SQUARE METERS (600 M2) and
--SEVEN HUNDRED AND EIGHTY SQUARE METERS (780 M2), described in detail
in Certificates of measurement Survey number 38 and 39 of the
--year nineteen hundred and fifty-nine; together with all buil-
--dings thereon and with all pertaining thereto by nature, ----
--destination or accession. -----

Said rights of long lease have been acquired by Debtor by means of a deed of public sale and purchase, drawn up on the sixteenth day of January nineteen hundred and sixty-seven by the Civil-Law Notary Doctor E.C. Henriquez, at that time established at Curaçao, of which deed a copy was transcribed on the official Registers of the Conservator of Mortgages in Sint Maarten on the twenty-ninth day of May nineteen hundred and sixty-seven in Register C, Volume 26, number 113, and subsequently on the second day of June nineteen hundred and sixty-seven on the Official Registers of the Conservator of Mortgages on Sint Maarten was transcribed in Register



Exhibit G - Mortgage Deed Dated April 5, 1971

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C, volume 26, number 116 an extract of a deed of acquittance, passed on the twenty-third day of May, nineteenhundred and sixty-seven before the Civil-Law Notary, Doctor J.A. Schiltkamp in ---- Curaçao. -----

The appearer sub 1 declared furthermore that said properties are not encumbered by any other mortgage nor legal seizures than by a FIRST MORTGAGE in favour of the legal entity the NETHERLANDS ANTILLES for the amount of TWO MILLION EIGHT HUNDRED THOUSAND GUILDERS (NAfls. 2,800,000.--) CURRENCY OF THE NETHERLANDS ANTILLES, as appears from a mortgage deed passed on February twentieth nineteenhundred and sixty-nine before the Civil-Law Notary, Doctor E.L. Joubert at Curaçao, inscribed at the office of the Conservator of Mortgages on Sint Maarten on February twenty-fourth nineteenhundred and sixty-nine in Register B, volume 5, number 12, and by a SECOND MORTGAGE in favour of the limited liability corporation THE BANK OF NOVA SCOTIA N.V. established at Sint --- Maarten for the amount of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (US\$ 1,500,000.--) CURRENCY OF THE UNITED STATES OF NORTH AMERICA, as appears from a mortgage deed passed on November ---- twenty-ninth, nineteenhundred and sixty-nine, before Civil-Law Notary E.L. Joubert aforementioned, inscribed at the office of the Conservator of Mortgages on December third nineteenhundred and sixty-nine in Register B, volume 5, number 42. -----

The appearer sub 1 in his aforementioned capacity declared that Debtor furthermore agreed to the following stipulations made by the Bank: -----

1. that the amount due shall at all times be reclaimable and --- payable and shall also be immediately claimable without any notice of default being necessary: -----
 - a. in case Debtor might in any respect fail to comply with one or more of the obligations under this instrument and/or any obligation imposed or to be imposed by or in consequence of any agreement of granting of credit or similar arrangement with the Bank; -----
 - b. in case of withheld or incorrect statement with respect to any circumstances regarding the collateral; -----
 - c. in case the collateral for any reason or cause whatever, either as a result of effectuated expropriation, compulsory or voluntary, might in any way be sold or in any --- other way change ownership, or be put up to auction; ----
 - d. in case the collateral might be lost completely or partly by fire or any other event; -----
 - e. in case the collateral be placed under attachment, judi-

Exhibit 6 - Mortgage Deed Dated April 5, 1971

720a

- cially or in any other way; -----
- f. in case the Debtor be declared bankrupt, files in a petition for official moratorium, is liquidated or dissolved, or in case the goods of the Debtor will be placed under control or administration by virtue of any legal or Government decree; -----
- g. in case of seizure of the whole or part of the rent of the collateral; -----
- h. in case any decision is made or any transaction is effected as a result of which aforementioned right of long lease expires or ceases to exist or any change is made in the conditions in respect thereto arranged; -----
2. that the collateral shall be kept in good repair to the satisfaction of the Bank, its nature or destination shall not be altered, that it shall not be rebuilt or demolished and that it shall be insured and kept insured subject to the satisfaction of the Bank against such risks, at such amounts and under such stipulations as the Bank will deem desirable, evidence of the insurance to be handed into the Bank, and that in case of damage through fire the insurance money shall substitute the lost part of the collateral, which stipulation may be notified to the insurer for the expense of the Debtor; that the Debtor is held at all times to admit to the collateral an authorized agent of the Bank, or to cause this agent to be admitted, in order to examine the collateral; -----
3. that in case of omission in respect to the effectuation or the keeping of an insurance subject to the satisfaction of the Bank or in respect to the regular payment of the premiums or other costs of the insurance, the Bank will be authorized to contract an insurance to its satisfaction on behalf of the Debtor or in its own name, to pay the premiums and expenses and to charge the amounts paid therefor to the account of the Debtor; -----
- that after a sale, if effected, or any other change of ownership of the collateral, the Bank will be entitled to insure its interest in the mortgage in its own name, to pay the premiums and costs and to charge the amounts paid therefor to the account of the Debtor; -----
4. that in as far as the Debtor is insured against any other risks than those on account of fire, he shall now for then as a further security for the payment of all which the bank at any time from any source whatever may have or will have to claim, pledge to the Bank its provisional claims of the

insurers for money to be paid by them with an irrevocable authority to the Bank to notify the insurers of this pledge, to arrange with the insurers the indemnities due, about this to institute legal proceedings, arrange settlements, receive sums of money and give receipts therefor; -----

5. that all taxes and other liabilities, however named and incumbent on the collateral, shall be duly paid and that the receipts thereof and of the insurance premiums shall be furnished on first demand; -----

6. that without a written consent of the Bank rents may not be received for more than three months in advance nor be disposed of for the benefit of third parties; -----

7. that without a written consent of the Bank the collateral may not be alienated or further encumbered with mortgages, easements or other liabilities for the benefit of third parties; -----

8. that in case of default of payment of the amounts due to the Bank or in case of failing adequate compliance with any other condition of this deed, the Bank will be irrevocably empowered to sell the collateral as a whole or in parts by public sale, according to local customs, if necessary, to hold over the collateral at an auction with a right to resume the auction at a later date, to lay down the conditions of the sale, to receive the proceeds of the sale, to give a receipt therefor and to transfer the sold property in order to recover out of the proceeds the amount due as well as the costs, --- and to foreclose again in case the buyer is in default of payment of purchase money and costs due in virtue of the --- auction; -----

that in case of public sale or re-sale, the collateral shall be open for inspection for two days per week or for as many more as local customs require, at the option of the Bank, and that it shall be vacated on the date fixed in the conditions of sale; -----

that if necessary the vacation may be effected in virtue of the official copy of the deed of public sale; -----

9. that in respect of the amount due on demand, for the payment of which the collateral may consequently be attached, or --- sold by virtue of the abovementioned irrevocable authority, the Debtor shall agree and conform to the accounts of the Bank, so that he now for then agrees to the foreclosure or sale being effected for the balance of the Debtor's account,

Exhibit G - Mortgage Deed Dated April 5, 1971

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made up by the Bank and signed in conformity to its books, with interest and costs and, if the foreclosure or sale is effected for the recovery of a debt on account of a security contracted or to be contracted by the Debtor in favour of the Bank for the balance of the account of the principal Debtor made up by the Bank and signed in conformity to its books, to an amount however, not exceeding the maximum amount of the security, all this without prejudice to the right of the Debtor to demand from the Bank the surrender of the sum by which the proceeds of the sale received by the Bank in virtue of the foreclosure or sale as the Debtor shall have to prove, might exceed the sum, which the Bank is entitled to recover from it, in as far as no further mortgage creditors are admitted to prove for said amount; -----

10. that in case of a voluntary sale of the collateral, a cancellation of the mortgage right created by virtue of this deed cannot be demanded, unless the sale is effected pursuant to the provisions of Article 1203, paragraph 2 of the Civil Code; -----
11. that all costs of this instrument, the registration of the mortgage, its cancellation and all other costs and expenses which might result now or later from the present instrument, shall be paid by the Debtor; -----
12. the conditions 8 and 10 will only be in force in case the mortgage granted in this instrument will be a first mortgage. Parties finally declared in pursuance of this agreement to choose their domicile: -----
the Debtor now and in course of time at the office of the custodian of this instrument and the Bank at its office at Philipsburg, Sint Maarten. -----
The appearers and the witnesses are known to me, Civil-Law Notary. -----

----- WHEREOF THIS DEED -----

has been executed on Sint Maarten in one original copy on the day mentioned in the heading hereof in the presence of: -----
Mister Robert Roland Rudy Hagenbeek, a clerk and Mister Dingnis Butijn, a notarial candidate, both residing at Sint Maarten. -----
Immediately after the reading aloud this deed was signed by the appearers, the witnesses and me, Civil-Law Notary. -----
(was signed:) Goberman, Jansen, Hagenbeek, Butijn, Speetjens. -----
Ingevolge telefonische toestemming van de Inspectie der Belastingen te Surinam, geregistreerd op Surinam a.d. 14-IV-1971 in deel 11223. De handsontvanger op Sint Maarten, W.G. Jacobus. -----

Exhibit G - Mortgage Deed Dated April 5, 1971

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----- UITGEGEVEN VOOR WOONDELIJK AFSCHRIFT -----
ter verzoeken van de heer R.F. Gibson, advocaat, wonende op Sint
Maarten, in zijn hoedanigheid van curator in het faillissement
van SINT MAARTEN ISLE HOTEL CORPORATION N.V., -----
op heden, zes en twintig oktober, negentienhonderd drie en zeven-
tig, door mij, Meester Dingnis Butijn, kandidaat notaris, wonen-
de op Sint Maarten, waarnemende het ambt van Meester Josephus
Gerardus Maria Speetjens, notaris ter standplaats Sint Maarten.

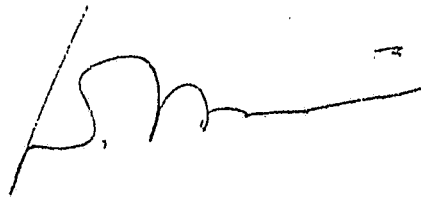


EXHIBIT H - LETTER DATED APRIL 3, 1971 TO MR. van de VOORT
SIGNED BY ALLAN GOBERMAN

724a

April 3, 1971

Mr. P. P. van de Voort
President

Dear Mr. van de Voort,

This is to confirm that in accordance with the agreement made April 3d and attached hereto in fotocopy I, as director of St. Maarten Isle Hotel Corporation N.V., agree to give a third mortgage for the debt owed by my corporation to the Windward Island Bank N.V. on the terms stated in said agreement. You may make the necessary arrangement in consultation with my attorneys.

Yours very truly

ST. MAARTEN ISLE HOTEL CORPORATION

s/ Allan Goberman

ALLAN GOBERMAN
MANAGING DIRECTOR

In te
het II

Da

TOELICHTING

De opgave moet in de Nederlandse taal duidelijk en zo mogelijk met de schrijfmachine geschreven zijn.
In een opgave mogen geen afkortingen of raderingen voorkomen.
Veranderingen in een ter inschrijving aangeboden opgave, moeten door de aanvrager worden gemaakt.
De ledige ruimte achter niet-beantwoorde vragen moet door de aanvrager worden doorgehaald.
Onduidelijke opgaven kunnen door de Secretaris worden geweigerd.

1. Betreft de opgave een gehuwde vrouw of weduwe, dan worden mede opgegeven de naam en de voornamen de echtgenoot of van de overleden echtgenoot.
2. Ligt de geboorteplaats buiten de Nederlandse Antillen, dan wordt mede opgegeven de naam van het land, waar die plaats ligt.
3. Onder vestiging wordt verstaan vestiging in de zin van P.B. 1946 No. 43.

1. Opgave van SINT MAARTEN ISLE HOTEL CORPORATION N.V.
(Handelsnaam)
gevestigd te ST. MAARTEN

betreffende een nieuwe Beherder-Vereffenaar Het geen niet van toepassing is, moet door de aanvrager
Bestuurder-Commissaris worden doorgehaald.

2a. Naam GOBERMAN
(Zie toelichting 1)
b. Voornamen (voluit) ALLAN NORRIS
c. Welke functie bekleedt hij? DIREKTEUR
d. Woonplaats, straat, huisnummer en district c/o Isle Hotel, St. Maarten,
e. Geboorteplaats Philadelphia, U.S.A.
(Zie toelichting 2)
f. Datum en jaar van geboorte 28 mei, 1908
g. Nationaliteit Amerikaanse
h. Vestiging
(Zie toelichting 3)
i. Handtekening die door de Bestuurder, Commissaris, Beheerder of Vereffenaar, onder de stukken, de zaak betreffende, gesteld wordt, of de reden van verhindering
j. Paraaf
.....

2i. Naam
(Zie toelichting 1)
b. Voornamen (voluit)
c. Welke functie bekleedt hij?
d. Woonplaats, straat, huisnummer en district
e. Geboorteplaats
(Zie toelichting 2)
f. Datum en jaar van geboorte
g. Nationaliteit
h. Vestiging
(Zie toelichting 3)
i. Handtekening die door de Bestuurder, Commissaris, Beheerder of Vereffenaar, onder de stukken, de zaak betreffende, gesteld wordt, of de reden van verhindering
j. Paraaf
.....

Model 2. (A) Zonderlijke opgave betreffende een nieuw Bestuurder - Commissaris of een nieuwe Beheerder - Vereffenaar

DEZE STRÖÖK NIET BESCHRIJVEN

Exhibit I - Certification

726a

Naam
Zie toelichting 1)
Voornamen (voluit)
Welke functie bekleedt hij?
Woonplaats, straat, huisnummer en district
Geboorteplaats
Zie toelichting 2)
Datum en jaar van geboorte
Nationaliteit
Woning
Zie toelichting)
Handtekening
die door de Bestuurder, Commissaris, Beheerder of Vereffenaar, onder de stukken, de zaak betreffende, gesteld wordt, of de reden van verhindering
Paragraaf

Naam
Zie toelichting 1)
Voornamen (voluit)
Welke functie bekleedt hij?
Woonplaats, straat, huisnummer en district
Geboorteplaats
Zie toelichting 2)
Datum en jaar van geboorte
Nationaliteit
Woning
Zie toelichting)
Handtekening
die door de Bestuurder, Commissaris, Beheerder of Vereffenaar, onder de stukken, de zaak betreffende, gesteld wordt, of de reden van verhindering
Paragraaf

1 van de aangever Mr. J.G.M. SPEETJENS
2 van de aangever Voorstraat 79, Philipsburg, Sint Maarten.
elke hoedanigheid is de aangever tot
oen van de opgaaf gerechtigd? gemachtigde.
3 naar waarheid opgemaakt.

Sint Maarten, da 5 april 1971.

De Aangever,
(Persoonlijke handtekening)

MR. J.G.M. SPEETJENS.

In te vullen door het Handelsregister)

secretaris heeft het tot inschrijving der opgaaf.

W. get. R. O. Velde, St. Maarten, da 5 april 1971.

DEZE STROOK NIET BESCHRIJVEN

EXHIBIT J - LETTER DATED SEPTEMBER 18, 1973 TO HON.
BONSAL FROM HENRY E. PETERSEN

727a

September 18, 1973

T: 9/18/73
HEP:WSL:RJC:adl
123-66
Honorable Dudley B. Bonsal
United States District Judge
United States District Court
For the Southern District of New York
Federal Courthouse
Foley Square
New York, New York 10007

Re: United States of America

V.

Milton Parness and Barbara Parness

No. 73-Cr. 157

(U. S. D. C. S.D.N.Y.)

Dear Judge Bonsal:

By reason of Order No. 452-71 from the Attorney General of the United States dated January 30, 1971, I have been designated and authorized to make the certification required by Title 18, United States Code, Section 3503(a) (Pub. L. 91-452 Title VI, Section 601 (a), Oct. 15, 1970, 84 Stat. 934).

I hereby certify that the above-entitled criminal proceeding is against Milton Parness who I believe to have participated in an organized criminal activity which is the subject of this proceeding.

Sincerely,

HENRY E. PETERSEN
Assistant Attorney General

CC: Records
Petersen
Lynch
Campbell--2722 ✓
Office Chron.-2722
Parness File-2722

United States District Court
FOR THE

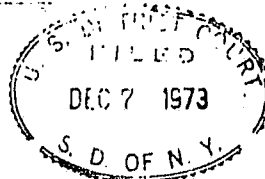
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

MILTON PARNESS

No. 73 Cr. 750



On this 7th day of December, 1973, came the attorney for the government and the defendant appeared in person and R.M. COHN, Esq.,

It IS ADJUDGED that the defendant upon his plea of ^{not} guilty and a verdict of guilty by a jury has been convicted of the offense of directly and indirectly acquiring and maintaining an interest in and control of Hotel Corp. through a pattern of racketeering activity, including fraud, extortion and the transportation of stolen money and securities in interstate commerce in violation of federal law, as defined in Title 18, U.S. Code, Sections 1961(1)(B) and 1961(5). (Title 18, U.S. Code, Sections 1961, 1962(b), 1963 and 2.); unlawfully, wilfully and knowingly transporting and causing to be transported in interstate commerce money and securities which had been stolen, converted and taken by fraud as the defendant then and there well knew. (Title 18, U.S. Code, Section 2314 and 2.); unlawfully, wilfully and knowingly causing and inducing a person to travel in interstate commerce in execution of a scheme to defraud. (Title 18, U.S.C., Sects. 2314 and 2) as charged in counts 1, 4, 5 and 6 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It IS ADJUDGED that the defendant is guilty as charged and convicted.

It IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS on each of counts 1, 4, 5 and 6, to run concurrently with each other.

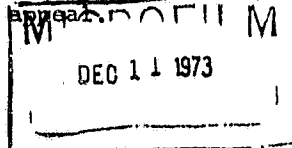
and

Defendant is FINED \$25,000.00 on count 1; \$10,000.00 on each of counts 4, 5 and 6. TOTAL FINE of \$55,000.00 is to be paid.

It IS ADJUDGED that

~~Defendant is not to be committed for non-payment of fine.~~
~~Committed Fine.~~

Defendant is continued on present bail until December 10, 1973 at which time he is to have rewritten the bond of \$150,000 for appeal.



It IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

W. B. Bond

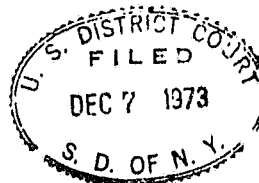
United States District Judge.

The Court recommends commitment to

Raymond F. Pughard
Clerk.

¹Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel. ²Insert (1) "guilty" and the court being satisfied there is a factual basis for the plea, (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. ³Insert "in count(s) number" if required. ⁴Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. ⁵Enter any order with respect to suspension and probation. ⁶For use of Court to recommend a particular institution.

United States District Court
FOR THE
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

v.

BARBARA PARNESS

No. 73 Cr. 750

On this 7th day of December, 1973, came the attorney for the government and the defendant appeared in person, and by R.M. Cohn, Esq.,

It IS ADJUDGED that the defendant upon ^{her not/} ~~his~~ plea of guilty and a verdict of guilty by a jury,

has been convicted of the offense of unlawfully, wilfully and knowingly transporting and causing to be transported in interstate commerce money and securities which had been stolen, converted and taken by fraud as the defendant then and there well knew. (Title 18, U.S. Code, Sections 2314 and 2.); unlawfully, wilfully and knowingly causing and inducing a person to travel in interstate commerce in execution of a scheme to defraud. (Title 18, U.S. Code, Sects. 2314 and 2.) as charged in counts 4, 5 and 6, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

It IS ADJUDGED that the defendant is guilty as charged and convicted.

It IS ADJUDGED that the defendant is sentenced to a term of TWO (2) YEARS on each of counts 4, 5 and 6, to run concurrently with each other. Execution of prison sentence is suspended. Defendant is placed on probation for a period of THREE (3) YEARS, subject to the standing probation order of this Court.

and

Defendant is FINED \$2,000.00 on each of counts 4, 5 and 6. TOTAL FINE of \$6,000.00 is to be paid. Defendant is not to be committed for non-payment of fine.

It IS FURTHER ORDERED that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

It IS FURTHER ORDERED that the clerk deliver three certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

W. B. Rosel

United States District Judge,

Raymond F. Berglund

Clerk.

¹ Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

² Insert (1) "guilty, and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

³ Insert "in count(s) number" if required

⁴ If sentence is imposed but execution suspended, and probation ordered, enter here (1) sentence or sentences, specifying counts if any, (2) whether sentences are to run simultaneously or consecutively, and if consecutively, when each term is to begin with reference to termination of preceding term or to any outstanding or unexpired sentence, (3) whether defendant is to be further imprisoned until payment of fine or fines and costs, or until he is otherwise discharged provided by law, (4) the facts regarding the suspension of the sentence or sentences and (5) the period of probation.

If sentence is suspended and probation ordered, enter here the following: "The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of _____ years from this date."